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CANADA

Debates of the Senate

2nd SESSION

• 37th PARLIAMENT

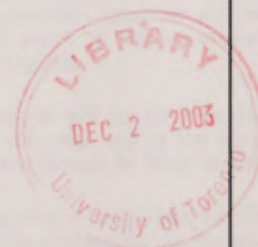
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OFFICIAL REPORT
(HANSARD)

Monday, October 27, 2003

THE HONOURABLE DAN HAYS
SPEAKER



CONTENTS

(Daily index of proceedings appears at back of this issue).

OFFICIAL REPORT

Hon. Joan Fraser: Honourable senators, I seek leave to have a correction made to the *Debates of the Senate* for Wednesday, October 22, 2003. On page 2202, the record of my speech on Bill C-34 quotes me as having said:

Canadians have seen Parliament come to the brink of disaster so many times in ethics matters ...

I understand the difficulties under which the stenographers labour, but what I in fact said was:

Canadians have seen Parliament come to the brink on this matter so many times.

I would not ever want it to be thought that I was accusing Parliament of having been at the brink of disaster once, let alone many times.

[Translation]

Also, the French translation has me saying: "les Canadiens ont vu le Parlement sur le bord du désastre." The translation of the English is accurate, but again, it does not reflect what I said.

Consequently, I would ask that the correction be made to the document, out of respect for Parliament.

[English]

The Hon. the Speaker: Is it agreed, honourable senators, that the correction be made?

Hon. Senators: Agreed.

THE SENATE

Monday, October 27, 2003

The Senate met at 2 p.m., The Speaker *pro tempore* in the Chair.

Prayers.

SENATORS' STATEMENTS

THE ENVIRONMENT

GLOBAL WARMING EFFECTS ON ARCTIC ANIMALS

Hon. Laurier L. LaPierre: Honourable senators, I would like to read a message from a young friend of mine. Skye Wilson, who is ten years old, made a statement to her class about the effects of global warming on arctic animals, and I thought it was a good lesson for all of us. After explaining what global warming was all about, she went on to say the following:

The Arctic is very snowy, but not all people know that it is mostly sea and ice. The animals depend on this sea and ice for their food in one form or another. But the circle of life is changing.

Birds that generally migrate south use the Arctic for summer breeding. However, since the summers have grown longer, the birds do not know when to leave. When they finally do leave, the temperature in other parts of the world is already freezing, killing off many birds.

Fishermen have cut into salmon and have found numerous strange insects inside. Some hunters are finding willow trees growing where no tree has ever grown. The whales appear sick and undernourished. The meat from the gray whales, according to the native people smells bad (like medicine) and even the sled dogs won't eat it. In recent years, seabirds have washed up dead by the thousands and deformed seal pups have become a common sight. The walrus is becoming scarce as well as the tundra rabbits.

The polar bears and seals are dependent on sea-ice for foraging, resting and reproduction. The ice is used as birthing dens for seals and for bears...

Because of global warming, the freeze-up is coming later and the bears are left on shore for longer periods. Scientists estimate that for every week of delay, the polar bear loses about 10 kgs. of critical fat reserves. Pregnant females are losing so much weight that they cannot produce milk for their cubs. There is already a 15 per cent reduction in births...

Our arctic animals are trying to warn us that their doom will be our downfall. We need to see that they are real, for even though most of us have never seen a polar bear, they are part of each and every one of us.

The elders in the north, who keep thousands of years of history and legends without ever writing it down, have long told the native children this story: If the ice that freezes thick over the sea each winter breaks up before summer, the entire village could perish. The children always laughed — till now.

[Translation]

OFFICIAL LANGUAGES

TRIP OF COMMITTEE TO THE WEST

Hon. Rose-Marie Losier-Cool: Honourable senators, it is with great pride that I tell this house today of the warm welcome the members of the Standing Senate Committee on Official Languages received last week from the people of Manitoba, Saskatchewan, Alberta and British Columbia.

Over a four-day period, our committee met with representatives of the francophone communities in these four provinces, as part of our study of French-language education in minority communities. This was the first time these representatives had appeared before a federal parliamentary committee on official languages, and we could see how deeply they were touched by our visit.

[English]

These francophone minority communities have told us about their projects, their frustrations, their achievements and their needs for providing French-language education to their people, from daycare to post-secondary education. Among many other things, we learned that Saskatchewan is the western province where it is hardest to provide a French-language education, and where the francophone communities are most at risk of assimilation.

[Translation]

The quality of the presentations by these francophone communities, the pertinence of what they had to tell us, the frankness of their replies to our questions, and the sincerity of their thanks, all provided us with proof of the important role Senate committees can play in the regions.

Our work is not done. The committee will continue its study in central and eastern Canada, later this year and in the spring of next year. We expect to report to the Senate by May of 2004.

I am proud to chair the Standing Senate Committee on Official Languages, and I am honoured by the inestimable co-operation of my colleagues on the committee. I thank the Senate for this opportunity to promote our institution in the regions, while at the same time helping the communities we serve. I wish our committee many other such successes, and a long life.

• (1410)

ROUTINE PROCEEDINGS

CLERK OF THE SENATE

2003 ANNUAL ACCOUNTS TABLED

The Hon. the Speaker *pro tempore*: Honourable senators, I have the honour to lay before the Senate, pursuant to rule 133, the document entitled "Statement of Receipts and Disbursements for the Year Ended March 31, 2003."

INTER-PARLIAMENTARY UNION

ONE-HUNDRED SEVENTH CONFERENCE, MARCH 16-23, 2002—REPORT TABLED

Hon. Joan Fraser: Honourable senators, I have the honour to present the report of the Inter-Parliamentary Union, following its 107th conference, held in Marrakech, Morocco, from March 16 to March 23, 2002.

[English]

OFFICIAL LANGUAGES

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Rose-Marie Losier-Cool: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Official Languages have power to sit at 5 p.m. today, after the standing vote, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

The Hon. the Speaker *pro tempore*: Is leave granted, honourable senators?

[Translation]

Hon. Marcel Prud'homme: Honourable senators, I would again make the following comment. Of course, I shall vote in favour of the motion put forward by the honourable senator. Nevertheless, I would like to point out that several other honourable senators have told me they intend to object to this motion. If they do so, I shall certainly join with them.

The *Rules of the Senate* do not allow committees to sit while the Senate is sitting. Unless it obeys the Rules, the Senate may find itself with insufficient numbers to deal with important bills. If plenary sessions of the Senate are not important, I wish to be informed. We need to know how many honourable senators wish to sit. Certainly, the honourable senator is doing an excellent job. Still, I find this practice a very bad one. If the rules displease us, let us ask to amend them. Then we could abide by them.

Hon. Eymard G. Corbin: Honourable senators, I believe there is good reason to make an exception in this case. When Committee on Official Languages was established, it was agreed that it could hold its sittings and meetings on days when the Senate does not normally sit. We cannot hold the Committee on Official Languages responsible for the fact that the Senate decided, at 11 p.m. last Thursday, that it would sit today, a normal day of sitting for the Committee on Official Languages. It is important to see the distinction.

[English]

Hon. Terry Stratton: Honourable senators, what is the regular meeting time for this committee?

Senator Losier-Cool: We usually meet at 4 p.m. on Monday afternoon. Today, we decided to move the starting time to after the standing vote as we have witnesses to hear.

The Hon. the Speaker *pro tempore*: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Motion agreed to.

LEGAL AND CONSTITUTIONAL AFFAIRS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY FIREARMS ACT

Hon. George J. Furey: Honourable senators, I give notice that, at the next sitting of the Senate, I shall move:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report on regulations made pursuant to An Act respecting firearms and other weapons, Statutes of Canada 1995, Chapter 39, as contemplated by section 118(3) of that Act;

That the Committee submit its final report no later than December 31, 2003.

NATIONAL SECURITY AND DEFENCE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE

Hon. Colin Kenny: Honourable senators, I give notice that on Tuesday next, October 28, 2003, I will move:

That the Standing Senate Committee on National Security and Defence have power to sit at any time on Monday next, November 3, 2003, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

[Translation]

LEGAL AND CONSTITUTIONAL AFFAIRS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY ORDER OF REFERENCE THAT OTTAWA BE DECLARED BILINGUAL

Senator Jean-Robert Gauthier: Honourable senators, I give notice that on Wednesday, October 28, 2003, I will move:

That the Senate Standing Committee on Legal and Constitutional Affairs be authorized to examine, for the purposes of reporting by February 14, 2004, the Order of Reference to the effect that Ottawa, the capital of Canada, be declared bilingual under section 16 of the *Constitution Act, 1867, et seq.*, as declared by the 12,000 signatories to the petition tabled in this Chamber.

VISITORS IN THE GALLERY

The Hon. the Speaker pro tempore: Honourable senators, I wish to draw to your attention the presence in the gallery of His Excellency João Bosco Soares Mota Amaral, Speaker of the Assembly of the Portuguese Republic. He is accompanied by Ms. Maria Ofélia Moleiro, Social Democrat Party; Mr. Carlos Luis, Socialist Party; Professor Narana Coissoró; and by His Excellency José Pacheco Luiz Gomes, Ambassador of Portugal. On behalf of all the honourable senators, I welcome you to the Senate of Canada.

[English]

QUESTION PERIOD

HEALTH

GREY MARKET PHARMACEUTICAL SALES— EFFECT ON DRUG PRICES

Hon. Brenda M. Robertson: Honourable senators, a report released last week cautions that the grey market sale of pharmaceuticals to the United States from Canada may result in higher drug costs to our country. Marcel Cote, the economist quoted in the report, says that drug companies may seek to make Canadian prices for prescription drugs more similar to American prices due to the rising number of Americans who are buying Canadian drugs.

While a pharmaceutical company, Merck Frosst, sponsored this particular report, similar warnings have been made by other organizations recently. For example, the Canadian Pharmacists Association has already stated that providing drugs to American buyers, as well as Canadians, may put our system under great strain and may even lead to drug and pharmacist shortages.

Could the Leader of the Government in the Senate tell us whether the federal government shares these concerns and, if so,

how does the government plan to ensure that pharmaceutical companies do not raise costs here in an attempt to slow down the sale of prescription drugs to the United States?

• (1420)

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I shall begin with the second part of that question. Canada does not impose price controls on pharmaceutical products but, like almost all industrialized nations, Canada regulates the prices of pharmaceutical products. In 2002, prices of patent medicines in the Canadian market were completely in line with the median prices in seven other industrialized nations. In 2002, patent holders in the pharmaceutical sector invested \$1.8 billion in research and development in Canada.

As to the first part of the honourable senator's question, as she knows, the specific licensing and regulation of pharmacies is a provincial matter, not a federal matter.

Senator Robertson: Honourable senators, is the government concerned about the expected rise in costs, as we export our pharmaceutical supplies to the United States? I already had all the other information the Leader of the Government gave me. I am well aware of the other issues. However, the costs could easily match American costs if this continues, and that is the big concern. I should like the government leader to address that particular point.

Senator Carstairs: We are confident at this stage, honourable senators, that the regulating we do with respect to the price of pharmaceutical products — which regulating is ongoing — is sufficient to prevent any undue cost increase in this country.

APPROVAL PROCESS FOR NEW DRUGS

Hon. Brenda M. Robertson: I wish I were more comforted by the minister's remarks.

Honourable senators, the report also claimed that Canada's approval process for new drugs must be faster in order that it fall in line with the comparable European and American systems. This concern has existed for some time.

Our process for approving new drugs is so much slower than the European and American systems that it is frustrating for those people who are anxiously awaiting new drugs.

Could the Leader of the Government in the Senate tell us whether Health Canada is looking at the problem of slowness of approval?

Hon. Sharon Carstairs (Leader of the Government): As honourable senators know, Canada has a very rigorous review system and one of the best safety records in the world. Having said that, a great deal of criticism has been made our approval process is not quick enough, particularly with respect to new drugs and drugs that may prevent loss of life.

The government is taking steps, in cooperation with the provinces, to see whether we cannot, while maintaining the same rigorous safety standard, speed up the approval process.

INVESTIGATION INTO PAYMENTS TO KAGF CONSULTING

Hon. Marjory LeBreton: Honourable senators, in 1996, Health Canada was alerted to questionable payments being made to KAGF Consulting, a company owned by Keith Fontaine, the brother of Perry Fontaine, Chairman of the Virginia Fontaine Addictions Foundation. This month, the RCMP laid charges against Perry Fontaine relating to fictitious contracts that were funnelled through KAGF Consulting.

Can the Leader of the Government in the Senate tell us why Health Canada did nothing to stop the abuse of Canadian taxpayers' dollars when questions were first raised seven years ago during an internal audit at Health Canada?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I understand that questions were raised. At that point, there was no indication of the need for a forensic audit, which has now been ordered and is being conducted. As well, as the honourable senator indicated, criminal charges have been laid.

Senator LeBreton: Honourable senators, would the Leader of the Government in the Senate be good enough to find out what procedure was followed by Health Canada and who made the decision not to pursue it as vigorously as they now have?

Senator Carstairs: I will try to obtain the information that the honourable senator has requested.

PRIVY COUNCIL OFFICE

REQUIREMENT BY MINISTERS TO READ CODE OF CONDUCT

Hon. Terry Stratton: Honourable senators, could the Leader of the Government in the Senate, in her position as a minister of the Crown, advise us as to whether ministers are required to read the code of conduct prior to signing their compliance documents?

Hon. Sharon Carstairs (Leader of the Government): I can only tell the honourable senator that if ministers do not use that kind of prudence I am not sure that they could be held accountable under the process. Certainly, I was presented with a code of conduct, and I read it before I signed any document to that effect.

Senator Stratton: Assuming that Allan Rock read such a document prior to taking his family vacation at the Irving family's fishing lodge, he would have been aware of section 23(1) of the code, which states:

A public office holder shall take care to avoid being placed or the appearance of being placed under an obligation to any person or organization.

Could the Leader of the Government in the Senate tell us whether the Prime Minister has inquired of his Minister of Industry as to whether he has read and understands the code of conduct and, in particular, this section?

Senator Carstairs: The honourable minister has now reported all of this to the ethics counsellor and has opened himself to full investigation by the ethics counsellor.

INDUSTRY

MINISTER'S DECLARATIONS ACCORDING TO CODE OF CONDUCT

Hon. Terry Stratton: Section 22 of the code of conduct states that ministers and other public office-holders are required to notify the ethics counsellor and make a public declaration about gifts received over the value of \$200.

The Minister of Industry has made five such declarations, yet the free vacation to the Irving family's fishing lodge was not declared. Why not? When will the declaration be made?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, my understanding is that those declarations must be signed when such gifts are in line with the duties of the honourable minister. In this case, Mr. Rock has indicated that he did not think the vacation to the fishing lodge was in line with his portfolio responsibilities. Nevertheless, Mr. Rock has now submitted this file to the ethics commissioner for his investigation.

PARLIAMENT OF CANADA ACT

EFFICACY OF CODE OF CONDUCT

Hon. Terry Stratton: Honourable senators, this begs a question — and the debate should be an interesting one. If we pass Bill C-34, we will have a code of conduct. What is the point of having a code of conduct for parliamentarians, if they ignore the damn thing? Excuse my language.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, one would hope a code of conduct would not be ignored. It is hoped that the rules of the Senate that would come about were Bill C-34 to be passed would make it clear that the code could not be ignored.

Senator Stratton: Honourable senators, my apologies for swearing. I do not usually do that.

My apologies to you, sir. I will not do that again, if I can avoid it.

Senator Robichaud: Do you promise?

Senator Stratton: If I can avoid it.

Senator Robichaud: It is conditional.

Senator Stratton: How can we assure this chamber and the public that, should we pass Bill C-34 and bring in a code of conduct, someone will not do something like this? What is the point?

If the bill were to pass, then after putting in all this effort, if a minister or individuals chose to ignore the code, all our work would be for naught and the public would be more cynical than ever. How can you tell me that Bill C-34 and a code of conduct, instituted in this chamber, will have an effect on the behaviour of individuals like this?

Senator Carstairs: Honourable senators, I think we are debating a bill rather than conducting Question Period. However, if we have a set of rules, the vast majority, if not all, will obey them. If we have an ethics counsellor or commissioner, that person will be able to report to us on grievous violations.

• (1430)

THE ENVIRONMENT

NEW BRUNSWICK—PROPOSED TOXIC WASTE INCINERATOR AT BELLEDUNE

Hon. Eymard G. Corbin: Honourable senators, for months now, concerned citizens of the Gaspé Peninsula and Northern New Brunswick have been forcefully expressing their concerns about the implantation of a toxic waste incinerator at Belledune, New Brunswick. Most of the toxic waste will originate from the United States of America.

I was rather astonished and surprised that, in answer to queries in the other place, the federal Minister of the Environment claimed non-jurisdiction over the whole matter, putting all the onus on the Province of New Brunswick, which did not, in the first place, undertake an environmental study with respect to this project. I repeat: For months, citizens have raised grave concerns.

I cannot imagine that a plant of that nature would not, in the long term, emit substances detrimental to human life or marine life in the Bay of Chaleur, for example. I am also concerned that the residue of the toxic waste could be mixed with other waste from a local pulp and paper company to be used as a fertilizer. One must ask this question: A fertilizer to fertilize what, the food we eat?

Initially, one does not necessarily need proof that there will be toxic emanations from a project of that order, but everything should be put in place to ascertain that the products of incineration will, in no way, shape or form, regardless of jurisdiction, eventually affect human or animal life on land, in the air or in the water.

Is the government — especially Minister Anderson and Minister Thibault — prepared to reconsider their position on this dossier?

Hon. Sharon Carstairs (Leader of the Government): The project is entirely within the borders of New Brunswick and is therefore subject to the environmental laws of that province. That province has not yet completed its process with respect to public consultation. However, the renewed Canadian Environmental Assessment Act does allow the federal government to review a very narrow area; that is, the potential transborder environmental impact. That is the only thing they have the power to review on this particular project.

I am pleased to tell the honourable senator that the agency will conduct an investigation, on a priority basis, to determine

whether it would be appropriate to refer the project to a mediator or review panel with respect to its potential transboundary environmental effects.

Senator Corbin: I hope the minister realizes that Belledune is, for all practical purposes, on the shores of the Bay of Chaleur, and the waters of the Bay of Chaleur are federal waters. That would seem to me sufficient reason for the Minister of Fisheries to raise his hackles.

Senator Carstairs: I will raise that point with the Minister of Fisheries, but I shall repeat that the project is actually being built in New Brunswick. Environment, as the honourable senator knows, is a shared jurisdiction. When an environmental project is totally located within the boundaries of a province, there is little the federal government can do, with the exception in this case of raising the transboundary issue.

FOREIGN AFFAIRS

ZIMBABWE—TARGETED SANCTIONS AGAINST GOVERNMENT OF PRESIDENT MUGABE

Hon. A. Raynell Andreychuk: Honourable senators, the situation in Zimbabwe has not improved or disappeared, despite the lack of media coverage for the extreme human rights violations of Robert Mugabe's government. Zimbabweans are starving. It is estimated that 5.5 million Zimbabweans will require emergency food aid by early next year. That is almost half of the Zimbabwean population. People are dying, and not just from starvation. The government-sponsored youth militia are mass-producing child soldiers who violently carry out the agenda of the ruling Zimbabwe African National Union Patriotic Front. Members of the opposition party, the Movement for Democratic Change, are constantly in danger. Their lives are being threatened. They are arrested without justifiable evidence. They have been violently attacked and they are in danger day by day.

Honourable senators, the circumstances will not improve in Zimbabwe unless other countries mount pressure on the Mugabe regime. Canada needs to join other world leaders and fellow Commonwealth members in imposing targeted sanctions on the Mugabe regime. The United States, Australia, New Zealand and the European Union have all moved forward in imposing such targeted sanctions.

How will Prime Minister Chrétien respond at the Commonwealth heads of government meeting when the issues of Zimbabwe are addressed? Will he stand up and join with the United States, Australia, New Zealand and the European Union and impose targeted sanctions against President Mugabe's government, as I believe Canadians wish him to do, or will the Prime Minister remain silent on this critical issue of human rights violation?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I can assure the honourable senator that Canada is continuing to build a consensus among the Commonwealth nations on measures that would encourage real and lasting change in the country of Zimbabwe.

Senator Andreychuk: Honourable senators, Canada needs to be assertive in this area. Australia and New Zealand have said they would boycott the Commonwealth heads of government meeting should Mr. Mugabe be invited. That seemed to be the direction in which some African leaders were tending to go, and it was only when the voices of New Zealand and Australia so forcefully put the issue to the Commonwealth that, surprisingly, Mr. Mugabe is not being invited. This is an opportunity for Canada to explore targeted sanctions, as we did during the time of apartheid, and to explore the support we can gain from South Africa, Nigeria and those closest to the Mugabe regime to ensure that they follow this consensus that seems to be growing in the Commonwealth.

Senator Carstairs: I thank the honourable senator for her intervention with respect to the concept of targeted sanctions. I will take her comments to the government in order to indicate that she supports targeted sanctions and that they have been supported by other Commonwealth countries.

In terms of the decision for Canada not to attend the Commonwealth meeting if Mr. Mugabe were to be in attendance, it is fair to say that the meeting would not be held if that becomes the wish of a great many of the states, but they have backed off. The Commonwealth meeting will take place. I anticipate that discussions to be held at that Commonwealth meeting might very well take place between the Prime Minister and the President of South Africa when he makes a state visit to Canada next week.

• (1440)

Senator Andreychuk: Honourable senators, I have a comment and a further supplementary question. The fact that some heads of government so strongly pointed out that they would not attend if Mr. Mugabe were to receive an invitation may have swayed others who were tending to protect Mr. Mugabe. I think those individuals should be commended for taking this kind of action, and I hope that Canada would have followed through if there had not been that positive response from the collective of the Commonwealth.

My supplementary question is this: We have a lot of contact with Zimbabwe, and in the past we have had a good relationship with that country. This gives us an opportunity to understand what is currently going on in Zimbabwe. As individual parliamentarians, we have supported Amnesty International by partnering with opposition members, and we have supported journalists, and this is all commendable. Is the government considering the initiative taken by Dr. Keith Martin and Professor Irwin Cotler to investigate ways and means of indicting Mr. Mugabe for what are tantamount to violations of not only the International Criminal Court definitions but other United Nations resolutions and treaties?

Senator Carstairs: Honourable senators, it would be inappropriate for me to confirm or deny the existence of any investigation on any individual. However, I assure the honourable

senator that Canada is continuing to build consensus in the Commonwealth on measures that would encourage real and lasting change in Zimbabwe.

Senator Andreychuk: I know I did not give notice of this question to the leader, so I did not expect an answer, but I would request a written response on whether the government is following up on the initiative of Dr. Martin and Professor Cotler.

Senator Carstairs: As the honourable senator knows, these two individuals have made a request that Minister Cauchon seek an indictment. Such an indictment would be somewhat difficult to obtain, but that does not mean that attempting it should not be thoroughly investigated, and I can assure the honourable senator that that is being done.

[Translation]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, under Government Business, Bills, I would like to call Item No. 3, Bill C-41, last, after Item No. 9.

MODERNIZATION OF PUBLIC SERVICE BILL

THIRD READING—MOTION IN AMENDMENT— VOTE DEFERRED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, An Act to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts.

Hon. Jean-Robert Gauthier: Honourable senators, since I was elected to represent the riding of Ottawa-Vanier in 1972, I have paid particular attention to the federal Public Service. I have been involved, I have listened, and I have tried to advance certain issues.

My predecessor, John Thomas Richard, had occupied the position for 27 years when I replaced him. He told me there were two things I needed to do. The first was to listen to my constituents it was important that I know they had problems and the second was to stay informed about the Public Service, since the majority of the people I represented were members of the Public Service of Canada. This I have done for the 30 years I have been in the House of Commons and in the Senate.

We have a top-notch public service, one whose good reputation makes it a model for many other countries. As a parliamentarian, I have attached a great deal of importance to government accountability. I chaired the House Committee on Public Accounts, and the estimates committee in general. I was actively involved in receiving reports on management. Departments must motivate and advise their employees to ensure that they fulfill their responsibilities with economy, efficiency and effectiveness.

The executive is accountable to Parliament, while public servants are accountable to the executive for the performance of their functions.

Over the past 30 years, we have had a fair number of studies and commissions: the Royal Commission on Financial Management and Accountability; the Lambert Report in 1979; the Report of the Special Committee on the Review of Personnel Management and the Merit Principle; the Davignon Report. Add to that the Finkelman Report in 1974 on employer-employee relations in the Public Service of Canada and many others.

I participated in almost all of these studies. I wish to commend the government. Things are not moving fast, but they are coming along. Let there be no mistake: a great deal of thought and work went into Bill C-25. Both officials and politicians had to come up with a solution that would bring about a change by making things better, making public servants more accountable and more responsible, and that is what Bill C-25 does.

Minister Robillard is a courageous and determined woman. This is a balanced bill. It will have an impact on the public service as a whole. I am one who believes that the public service will be more efficient and effective if this bill is passed. I wish to congratulate all the public servants at all levels who participated in the development of Bill C-25.

Bill C-25 is an omnibus bill in the sense that it covers all the legislation governing the Public Service of Canada. It contains serious, well-thought-out proposals concerning labour relations in the Public Service of Canada.

It is all there. The table of contents gives useful information about the new Public Service Labour Relations Act. Part two deals with grievances. Part three deals with the Public Service Employment Act and makes significant changes to the role of the Public Service Commission. The Commission will have sole authority over appointments. Naturally, it will be able to delegate powers to the deputy minister and, through him or her, to public servants. But they will be accountable to Parliament. That is the role a parliamentarian is expected to play: gather information, make inquiries, keep constituents informed. That is what I tried to do and what Bill C-25 is proposing to do. I find that important.

The Public Service Commission will be solely responsible for all appointments. Appointments will be made on the basis of merit, which was not set out in the legislation until now.

• (1450)

This is the first time in Canadian legislation that there has been a satisfactory definition of the famous merit principle. Clause 30 of Bill C-25 provides a very clear definition. Naturally, the complexity and scope of the federal government require the careful attention of parliamentarians. We must oversee the management of the human and financial resources entrusted to us. That is what Bill C-25 proposes.

Honourable senators, you will not be surprised that, in the few minutes at my disposal, I will talk about something that is dear to my heart: official languages and the way they are incorporated into Bill C-25. I had two concerns, which I did not hesitate to raise in committee and here in this chamber.

In Bill C-25, there is no indication of who would be responsible for language training for public servants. To date, this has been the responsibility of the Public Service Commission. However, Bill C-25 takes this responsibility away from it. I tried to clarify this issue in committee, but to no avail. I was told that the Prime Minister would decide and that Bill C-25 was flexible enough to deal with this. I therefore wrote a letter to the Prime Minister on September 4, 2003. He responded on September 26, 2003. In his letter, the Prime Minister said that the new School of Public Service would be in charge of all training, including language training.

I will read you an excerpt from his letter:

You are wondering who will ensure delivery of language training and development under the new regime. Since you sent your letter, the President of the Treasury Board, when she appeared before the Senate Committee on National Finance, announced that the new Canada School of Public Service would provide these services. As you mentioned in your letter, the mandate of the new school provided for in Bill C-25 is sufficiently broad to include language training without having to introduce an amendment to the bill.

His response is satisfactory and I am pleased to say so. The Prime Minister has given clear instructions about what is to happen. Bill C-25 would also create a public service staffing tribunal. This tribunal will be made up of six people who will hear grievances and complaints related to internal appointments. I emphasize the word "internal". The tribunal will also provide a mediation service and will oversee political activities. It will even be able to hear grievances or complaints related to human rights. Nowhere in Bill C-25 are the bilingual abilities of this tribunal mentioned. Nowhere in Bill C-25 is it stated that the chairs of the appeals and grievances committees must be bilingual. You are going to tell me that that is understood. I say that it is not.

My experience as a francophone in Ontario taught me a long time ago that if a commitment is not written down, clearly and precisely, all sorts of excuses can be used to ignore it. Being able to become bilingual is not enough to offer services in both official languages today. That is what is done in Ontario. That is what was done in the past. And it is still being done today.

I will give you a classic example: the Divorce Act, which is federal legislation administered by the provinces. In some corners of the province of Ontario, it is impossible to sue for divorce in French. Yes, you may have the right to do so, but the court is not currently able to meet the language needs of francophones. They will tell you that the judges are not bilingual, but that you may bring in a bilingual judge; it will just take two or three or four months. But if you proceed in English, you will be able to begin the next week. Any federal court, as a representative of the interests of various groups of citizens, ought to have bilingual capability.

I had serious reservations about the linguistic capability of this tribunal. I raised them in committee. I proposed an amendment to ensure that the tribunal would have the linguistic capability to hear complaints and grievances in either of Canada's official languages.

The amendment I proposed would have ensured that the governor in council, who appoints the members of the tribunal, would make certain that, as a group, the members would be able to hear complaints. When an officer of Parliament speaks to us, we must listen. The Commissioner of Official Languages made recommendations on this issue. I listened to her and I proposed amendments regarding the responsibility of the tribunal to be able to serve all Canadians in both official languages. They were rejected.

The Commissioner of Official Languages consulted with other federal courts; there are several. She gained strong support from most of these in saying that, in the legislation, we must ensure that the linguistic capability of the court meets Canadian requirements.

I can understand how some of you might be reluctant to let us amend Bill C-25 at third reading. A sunset clause entails a review every five years. This will give us a chance to see how the legislation performed in reality.

I wrote the Prime Minister on September 4, asking him if the government and its senior officials intended to see to it that the Governor in Council ensures the linguistic capacity of the court. The Prime Minister made that commitment on behalf of the government in a letter dated September 26, 2003. I take the word of my Prime Minister and the serious commitment of his seniors officials. I will read two paragraphs of this letter dated September 26:

Finally, you wonder how the Public Service Staffing Tribunal will ensure that public servants can use the official language of their choice in their complaints. The Official Languages Act, a quasi-constitutional piece of legislation, already provides, in section 16, that courts such as the Public Service Staffing Tribunal must be able to understand the proceedings they hear in either official language without the assistance of an interpreter. There is therefore no need to amend Bill C-25 to ensure that these services are provided.

[Senator Gauthier]

However, I wish to reassure you with respect to the responsibility of the Privy Council in its advice concerning appointments and the responsibility of the Governor in Council in appointing members of the Public Service Staffing Tribunal; they will have to ensure that collectively the members of the tribunal have a bilingual capability allowing them to serve both language groups well in the official language of their choice.

This is what the Prime Minister told me. That is exactly what I wanted to hear. I am once again putting my trust in him. I would like to ask for leave, if I may, honourable senators, to table before the Senate both of these important letters so that they can be put on the record and printed as an appendix to the *Debates of the Senate* of this day.

I am seeking leave to table in the house the two letters I have received from Prime Minister Jean Chrétien, one on language training and the other on the public service staffing tribunal.

Honourable senators, I do not know whether I have much time left, but this bill has required a lot of time from many of you. This bill has been debated seriously. Amendments have been made. I was actively involved in all of these and have given my opinion on them. In committee, we heard a number of witnesses at considerable length. The bill was also discussed here in the Senate for quite some time. Now the time has come for a vote.

• (1500)

MOTION IN AMENDMENT

Hon. Jean-Robert Gauthier: Honourable senators, pursuant to rule 48(2), I move:

That the original question be now put.

[English]

The Hon. the Speaker: Honourable senators, Senator Gauthier has asked leave to table two letters addressed to him by the Prime Minister in respect of Bill C-25. Is leave granted, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: Senator Lynch-Staunton wishes to speak to the latter comment of Senator Gauthier. But first, Senator Gauthier is moving the original question under the rules and it is a debatable motion.

Honourable senators, I will put the motion and then ask whether any senator wishes to have debate on the motion.

It is moved by the Honourable Senator Gauthier, seconded by the Honourable Senator Fraser, that the previous question be put now.

Are there honourable senators who wish to speak on this motion?

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I listened carefully to Senator Gauthier's impressive intervention, and I concur with him that the Standing Senate Committee on Official Languages canvassed the matter of official languages in great detail. Senator Gauthier mentioned that he did bring forward an amendment dealing with the issues of official languages.

I would argue that the previous question should not be adopted by the house because there are a couple of items that were seriously considered by the committee. One of those items is whistle-blowing, and I have advised the Deputy Leader of the Government in the Senate that tomorrow I will introduce my amendments in respect of that issue so that honourable senators may have debate in the house because it has captured a great deal of attention.

We are close to the end of our deliberations on Bill C-25, but I would urge honourable senators not to support the motion on the previous question but to give our committee the opportunity to complete our work, which completion is only a matter of days away.

The Hon. the Speaker: Are there other senators who wish to speak to Senator Gauthier's motion?

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I agree with what Senator Gauthier has said. We have debated this matter for some time, and it did merit a great deal of attention. The honourable Senator Gauthier has raised several points to that effect and I agree.

The honourable deputy leader of the opposition has indicated his intention to speak to this bill, as he told me this morning that he would, by way of an amendment, particularly in connection with whistle-blowing, and how the bill could be improved.

Now I find myself in a rather delicate position. In my opinion, we ought to go ahead with this bill. We do, however, have before us a motion which, if I understand the *Rules of the Senate* correctly, would mean the bill would be struck from the Order Paper if defeated. Such is certainly not the intent of either the Honourable Senator Gauthier or the Honourable Senator Kinsella.

I would like to propose a helpful solution. Suppose that the Honourable Senator Gauthier agrees to withdraw his motion. We would have to get assurances from the honourable senators that we could address this issue this week, perhaps in the next two days, provided that my colleague across the way agrees. In my view, this is in fact an important point. The Honourable Senator Kinsella has always talked enthusiastically about this protection that should be offered to public servants.

Consequently, if Senator Gauthier is asked to do this, perhaps Senator Kinsella could promise us that these issues would be taken into consideration this week.

[English]

Senator Gauthier: If that is the question posed by the Deputy Leader of the Government in the Senate, I wish to remind him that proposed legislation before this house does take a long time. However, 13 days on one bill, plus six days in committee, is a great deal of time, in my opinion. I have the dates in committee and in the house in respect of this matter. There were meetings of the National Finance Committee on June 17 and 18, and September 2, 3, 16 and 17. The house had third reading debate on September 23, 24, 25 and 30, and on October 1, 2, 8, 9 and 21.

I do not think anything could be added to this bill because it has been thoroughly debated, and amendments were disposed of. With all due respect, honourable senators, I do not want to withhold my goodwill and I do not like negotiating in public. However, if an agreement is reached between the official opposition and the government to deal with Bill C-25 this week, then I could possibly withdraw my motion — with unanimous consent, of course.

Senator Kinsella: We could have a debate —

[Translation]

Senator Robichaud: Honourable senators, I do not expect there to be agreement. I am somewhat embarrassed by the fact that we cannot agree. Therefore, I have invited the honourable senators on my side to vote in favour of Senator Gauthier's motion. This bill must go ahead. Voting against the honourable senator's motion would mean that this bill would be dropped from the Order Paper.

[English]

Senator Kinsella: The suggestion, as I understood it, is that Senator Gauthier would seek the unanimous consent of the house to withdraw his motion and that, pursuant to usual practice, I would be happy to meet with the honourable senator to carry on the discussions that we had this morning. I do not think we need to have that discussion in the chamber.

Senator Robichaud: Honourable senators, I think it would be proper to reach an agreement on this matter now.

Senator Lynch-Staunton: That would be highly irregular.

Senator Robichaud: In that way, all honourable senators would be aware of the question and the condition under which the Honourable Senator Gauthier would ask leave to withdraw his motion that Bill C-25 be dealt with this week. I think if we had the word from my honourable colleague that it would be done, then Senator Gauthier would probably accept it and I would certainly go along with that. However, not seeing that, I would have to invite senators on this side to vote in favour of the motion.

• (1510)

Hon. John Lynch-Staunton (Leader of the Opposition): It is highly irregular to discuss, in public, what is usually done discretely — that is, both sides agree to recommend to their caucuses how they would like to see business proceed. Each side will hold a caucus meeting tomorrow morning. Out of courtesy to that tradition of caucus discussion, I think the deputy leader could wait another 24 hours. We will certainly take his views to our caucus. We are aware that this bill is of particular priority and that the government would like to see it passed by the end of the week. We would be glad to advise the deputy leader tomorrow how our caucus feels. To ask us to have these discussions in public is highly irregular, and I will not be part of them.

Second, Senator Kinsella has an amendment he wants to bring forward tomorrow. I happen to have one today, which I will explain. It is not one to delay; rather, it is intended to bring a little order to how we approach this particular bill. I would ask the deputy leader to be patient and wait until tomorrow for his answer.

[Translation]

Senator Robichaud: Honourable senators, this motion that the previous question be put is not a government motion. I am asking for agreement, simply to enlighten the motion's sponsor, Senator Gauthier. I would not want to influence it one way or the other. If he is seeking an agreement in order to dispose of the bill this week, and seeking consent to withdraw his motion, I would not have any problem with him doing so. I believe that is what he was trying to do. The question is when can we dispose of this bill.

[English]

Senator Gauthier: Honourable senators, I have used this procedure because I am becoming impatient with the progress of this bill. I am concerned. We have been waiting 30 years for some action regarding the Public Service of Canada. We have got action now. Bill C-25 is a good bill. It is not a perfect bill — I agree, we can always fine tune it. However, unless I have a commitment that this bill will be passed before the government prorogues or adjourns — rumours are flying all over the place — I do not feel secure going along with the argument that says, "Trust us, we will look at it tomorrow." I have waited too long and I maintain my position.

Senator Kinsella: By my calculations, it would take us another two days to complete our work. Not knowing whether we are sitting this Friday, I could assure Senator Gauthier, at least from the opposition's point of view, that we will be done our work no later than next Monday, if we are sitting that day.

I would undertake to meet with the Deputy Leader of the Government to discuss when we will complete our work on this bill. At the outset, it would be no later than next Monday. It could be sooner.

I do not know Senator Gauthier's time line, but if my undertaking give him the margin of comfort that he is seeking, it would facilitate us to complete the other matters that we wanted to bring to the chamber at third reading stage. My appeal to Senator Gauthier would be for him to seek unanimous consent to withdraw the motion, and I would undertake to meet with the Deputy Leader of the Government to negotiate time allocation. I do not expect it would be more than Friday or Monday.

Senator Gauthier: The facts, as I see them, are that we have had 13 days in this place, six days in the other place and 20 hours in committee. This bill has been studied; we have looked at it backward and forward. I do not question the goodwill of the opposition. I think they are trying to do a good job, and I think Senator Kinsella has proven to us that on the question of whistle-blowers, he has a serious issue. However, the government has answered. We have put together a study group to look at this question, with a mandate to report in January 2004, to get the views of all the people concerned. I do not mind saying this publicly: I respect Senator Kinsella's and Senator Lynch-Staunton's views, but I do not want to be part of any negotiating based on "if we can negotiate" or "if we do it by this day." I am fed up with this process. I think this bill should be debated at third reading now. There is no limit on time. I want the main question, which is on Bill C-25, to be put to this house and disposed of. That is what I am proposing. All the previous question is asking us to do is to vote on the main question. They cannot put any more amendments. That is the difficult issue. Additional amendments to Bill C-25 cannot be moved. The main question must be put.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, we have heard from Senator Kinsella that he is willing to make a commitment that all votes on this bill could occur by Monday or no later than Monday.

Honourable senators, rules 38 states:

At any time while the Senate is sitting, the Leader of the Government in the Senate or the Deputy Leader of the Government in the Senate may state from his or her place in the Senate, that there is an agreement among the representatives of the parties in the Senate to allot a specific number of days or hours to the proceedings at one or more stages of any item of government business.

If we were to exercise rule 38 and to indicate that all stages of this bill should be dealt with prior to 5 p.m. on Monday, then we would meet the objectives of both Senator Kinsella and Senator Gauthier. If we could announce that kind of agreement this afternoon, then we would have the proper procedure in place to allow for a few more days of debate. We have Senator Kinsella's motion and perhaps Senator Lynch-Staunton's motion, but such a process would also meet the needs of Senator Gauthier.

Senator Stratton: I would like to move adjournment.

Senator Lynch-Staunton: On what?

The Hon. the Speaker: It is a debatable motion. A debatable motion can be adjourned.

Did Senator Stratton want to vary his motion to adjourn debate?

Senator Stratton: I would like to withdraw my motion to adjourn debate.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Gauthier: I am impressed and I am happy. I have a commitment, I think. Given the debate between the honourable senators, I would like unanimous consent to withdraw my motion.

Hon. Anne C. Cools: I find myself deeply puzzled by what is happening here because it is not so much a debate as it seems to be an exercise in horse trading. I find that process curious and troubling.

• (1520)

I understand and appreciate that Senator Gauthier moved a motion with regard to putting the previous question to the house, but it seems to me that perhaps there are other senators who have concerns as well. I mean, with all due respect, that I am under the impression that other senators in this chamber have concerns and wish to speak on this bill other than Senator Gauthier and Senator Kinsella. I just find it a little bothersome that this exchange does not seem to countenance the fact that there are other opinions in this chamber, and perhaps there are other senators who may want to speak or who have some interest in some aspect of this bill.

I just wonder, Your Honour, about the propriety of blessing this kind of exchange. If Senator Gauthier has moved a motion for the purpose of forcing certain senators here to make a commitment about when they will make a conclusion about certain proceedings, then there is something very wrong with all of this procedure. I just find it a little bothersome. This is the sort of discussion that we usually carry on in private meetings in caucus.

Senator Prud'homme: My caucus.

Senator Cools: You are a caucus of one. I am bothered by the whole exchange because I understand that Senator Kinsella has made a commitment to complete debate by Monday, and I think that is very worthwhile of him. However, is there no one else in this chamber involved in this discussion, other than the two senators I have mentioned? Have we become a chamber of three players?

It took me a long time, honourable senators, to show you my dismay because I had just arrived in the chamber. It took me several minutes to track down a copy of the motion. It was as though the motion that was being bandied back and forth was not even properly in the hands of senators. I just find this sort of thing not really worthy of senators. I think we can do much better. It is a subtle sort of blackmail, and I am not too sure that I like being held hostage like this.

[Translation]

Hon. Marcel Prud'homme: Honourable senators, these little two-person meetings where agreements are made and some people speak on behalf of everyone are very dangerous. It is very awkward for those who belong to a political party.

I remember one debate where a similar agreement had been made between the two major parties and one of the two individuals forgot to consult his caucus. It gave rise to some very disagreeable debates in the Senate. Here we do not know what is going on and, if we decide to invoke the *Rules of the Senate*, none of these agreements will work.

I have always said that we are all equal. It does not hurt to inform those who could derail these little agreements made from time to time in the name of the entire Senate.

I do not feel I am personally involved, as an independent senator; I certainly cannot speak for Senator Roche, Senator Plamondon or Senator St. Germain. It is dangerous when two or three senators who could derail any such agreement are left out. The government will not have its legislation. A little more consideration has never hurt anyone and could help the Senate function more harmoniously.

Senator Robichaud: Honourable senators, to answer the questions of the two previous speakers, there has been neither secrecy nor deal. Senator Gauthier moved a motion, which is still before us. This motion has not been withdrawn, because consent to do so has not yet been sought. After the motion was moved, some honourable senators expressed the desire to have more time to speak to it because it has the effect of steering the debate in such a direction that we may not be able to entertain any more amendments and speak only to the main motion.

Senator Kinsella would have liked to have a little more time to speak to this issue, which is of great interest to him. Senator Gauthier just wanted to ensure that the bill moves forward and that we come to a decision. For him, that should be now. If we agree, he will withdraw his motion, allowing the debate to continue for a few days. This does not exclude anyone. It includes anyone who may wish to speak on motions in amendment or on the motion for third reading. I do not know whether I was successful in clarifying the matter or just obscured it further.

Senator Prud'homme: I would like to tell the minister that, when the item was called, I shouted "question" to Senator Day. That means I am in a good frame of mind. I called for my colleague to have the question put. This means I do not intend to participate, which will reassure Senator Robichaud. I do not intend to water things down, nor slow down debate. I am merely making an appeal, as is sometimes done. I am not down on my knees. They are not what they used to be. I am beyond the days of getting down on my knees and asking people to be nicer to each other. I did not want to hold the debate up unduly, because I would have been prepared to vote.

[English]

Senator Cools: I think, honourable senators, we should be crystal clear that this particular device is a form of closure. It is a form of truncating the debate.

Senator Kinsella: It is worse!

Senator Cools: It is a very old system, and we have all had some experience with it before. It is the sort of thing that is, frankly, normally not moved by a private member. It is usually moved by a member of the government. I have only known it to be moved by a government member. I notice that it was moved by Senator Gauthier and seconded by Senator Fraser, as copies of the motion are being distributed.

I have difficulty accepting the fact that Senator Gauthier's intention would be to cut off debate and to keep some of us — well, some of the honourable senators on the other side — from speaking, because I always associate Senator Gauthier with, quite frankly, upholding the need of chambers and the need of members to debate. It seems to me, because this kind of discussion belongs within our caucuses, because of the unusual state of this particular motion, because of the rarity of its use and because usually it is a tool of government, that perhaps the solution might be for Senator Gauthier to withdraw this motion. Perhaps, as Senator Lynch-Staunton suggested, tomorrow the two major parties — and I am sorry, I know I always forget about the independents and so on — could canvass their caucuses to see whether some sensible and more satisfactory agreement could be arrived at.

In the interests of upholding the integrity of Parliament and the rights of members, I do not think that this procedure is healthy.

• (1530)

There is a part of me that cannot help but think that this procedure is extremely unhealthy and unusual because the bill is at no risk. I appreciate that Senator Gauthier is enthusiastic to see this matter pass rapidly. However, this bill is at third reading and the bill is at no risk whatsoever. It is healthy and desirable to see some good and thorough debate and research around here. Perhaps that is the solution, and the honourable senator could withdraw his motion.

Senator Robichaud: He has asked for consent to withdraw the matter.

Senator Cools: I thought we were debating.

The Hon. the Speaker: No, we are not debating; we are on house business.

Senator Cools: What item are we on?

The Hon. the Speaker: Perhaps I could assist honourable senators.

What is before us is a request for leave from Senator Gauthier to withdraw his motion to put the previous question. That item was interrupted by an exchange on what I consider to be house business, which has been listened to by Senator Gauthier, and that prompted him to make this request.

Honourable senators, is leave granted to accede to Senator Gauthier's request to withdraw his motion to put the previous question?

Hon. Senators: Agreed.

The Hon. the Speaker: We are now on Bill C-25.

Senator Lynch-Staunton: Honourable senators, allow me to say that I am quite troubled by the discussion that just came to an end. I can appreciate the frustration and impatience of Senator Gauthier to see this bill go through, which it will. Certainly, it is better than we have now, but it could be improved, and every amendment that was brought here was an attempt to improve upon the bill.

Tomorrow, Senator Kinsella will move a motion in amendment that will introduce a whistle-blowing provision which may or may not be turned down. It is not enough to be told, as Senator Gauthier has told us, "Well, forget that aspect of it, because the government has already told us that they are forming a committee to study the whistle-blowing thing and we should be satisfied with that." We should not be satisfied with what the government is doing; we should be satisfied in coming to a decision collectively on whether we want things done in a particular way.

Tomorrow, Senator Kinsella will give us the option of whether we want the concept of whistle-blowing introduced in this bill immediately, or whether we are satisfied to wait for the government to come out with its report early next year. That is why we are here: not to listen and agree to unilateral decisions taken elsewhere, but to agree amongst ourselves on what course we want a bill to take, and how we want to see it changed or not changed.

I know I am off topic now, but I must say this anyway. I do not know what Senator Gauthier meant by saying that he got a commitment. I do not know anything about a commitment. All I know is that Senator Kinsella said publicly that, as far as he could see, we could be through with debate on this bill by Monday. Then again, I am not too sure whether he said we would be through by Monday, but when Senator Kinsella gives an indication, it can pretty well be taken as something that can be confirmed shortly.

Senator Robichaud: Very close to a commitment.

Senator Lynch-Staunton: Very close, but not there yet.

That is why, for the sake of all of us, I wish to ensure that we know where we are going with this bill, and that each caucus reflect tomorrow on what is being said today. We will discuss in caucus tomorrow what our approach is and whether we have more amendments to bring. Senator Robichaud and Senator Kinsella will then get together, as the rules provide, and agree to disagree, or agree to agree, and the house will be so informed tomorrow afternoon. I hope that we will continue to follow that procedure rather than negotiating here, ad hoc, without having all the facts at hand.

Finally, I will say this: What is the rush to have this bill go through by Monday or Tuesday of next week? Will the government please come clean? We are still working on the basis that legislation in front of us and to come will continue to be debated and voted on, if the government so requires, according to the calendar that we have before us, which is that we sit here until a few days before Christmas.

I said last week that we will not delay the vote on any bill on which the government wants a final decision taken prior to our Christmas-New Year's break. It now appears that certain bills must be brought to a vote over a month before that. There must be a reason.

Why must Bill C-25 be decided next Monday, when we continue to be told, and the House leader in the other place keeps telling his colleagues, that he is planning a legislative agenda to take them right up to Christmas? The Minister of Justice, for one, has said that he has one particular bill, the topic of which I have forgotten, but in the newspaper he said that he hoped to see it passed by Christmas.

This continues to be the official position of the government. It happens to be the official position of the leadership on the other side. Thus it must be our position also. If the calendar is to be changed — and the government has a complete right to change it — then do let us know. If not, we will go on the basis that we are here with a one-week interruption in November, right through until, if necessary, the third week of December, and if necessary, into January.

I address this subject for the last time, it is to be hoped, and also that the government will come clean as soon as possible.

Meanwhile, on this particular bill, honourable senators will know through points of order that have been raised here on Bill C-41, that Bill C-41 includes two amendments to Bill C-25. We are in the peculiar position of having before us one bill, and another bill that has yet to pass second reading and that contains amendments to the bill that is before us. In other words, Bill C-25 is in two places at the moment: Here before us at second reading, and in Bill C-41, which has yet to be discussed. It is being assumed, of course, that both bills will pass as is, but that is an assumption that I find rather excessive.

I have never done this before, but I would move what should be perhaps a government amendment. In other words, I suggest to the chamber that we take the amendments to Bill C-25 out of Bill C-41 and make them our own amendments, so that the bill will have attached to it amendments directly put to it rather than amendments put to it indirectly through a bill that is before us, but whose course has yet to be determined. Who knows, it might be rejected or re-amended. To be on the safe side, let us take those amendments and make them ours by attaching them to Bill C-25.

The corrections brought in Bill C-41 are really of a technical nature. They are to make a French and English term interchangeable as far as the language goes.

[Translation]

The French version does not exactly match the English. The proposed changes merely bring the French in line with the English. This technical correction ought not to be a topic of debate, therefore. It is nothing more than an improvement to the wording.

[English]

MOTION IN AMENDMENT

Hon. John Lynch-Staunton (Leader of the Opposition): Therefore, I move, seconded by Senator Kelleher:

That Bill C-25 be not now read a third time but that it be amended in clause 230, on page 249, in the French version,

(a) by replacing line 32 with the following:

“saire, commissaire délégué et employés de”; and

(b) by replacing line 34 with the following:

“les commissaire et commissaire délégué sont”.

• (1540)

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, the government has introduced Bill C-41. Bill C-41 was adopted by the House of Commons, was then given first reading in this place and is on the Orders of the Day.

Bill C-41 contains an amendment to Bill C-25. We have yet to pass Bill C-25. Bill C-41 assumes that we will pass Bill C-25. If we do that, and if we pass Bill C-41, a certain amendment will be brought to Bill C-25 by way of Bill C-41, which has yet to receive second reading.

Senator Lynch-Staunton has laid before this chamber an amendment to Bill C-25 which the government itself has brought through Parliament, has itself supported in the House of Commons, and which, I anticipate, will be supported by government senators in this chamber. Honourable senators, clearly the government has seen a flaw in Bill C-25. Having seen that flaw, they brought in the bill that is now before us.

What is our job here in the Senate? If our job is not to review and improve legislation, then what is it? Why are we here if not as a chamber of review of legislation from the other place? Indeed, the best argument for a bicameral system is that two houses working on a bill results in better legislation than a unicameral system.

The other place has accepted a bill from the government that detects a flaw in Bill C-25. How can we possibly hold our heads up if we do not look at Bill C-25 and deal with the flaw that the government and the House of Commons have found in it? The House of Commons has passed a bill to amend Bill C-25, should this house adopt it.

Honourable senators, I do not know how the majority will get out of this one. We know that they march to the drum that is beaten across the street. However, if we are serious about our responsibilities as legislators, we must find that the government has placed them in an extraordinary box. The government has told us that there is a flaw in Bill C-25, and that they have brought in a bill which they got their majority in the House of Commons to adopt, and which is now in the Senate, amending Bill C-25.

We have clearly apprehended a flaw in the bill. Will we stay in the box and do nothing about it, or will we meet our responsibility and amend the flaw in the bill, which is exactly what the amendment now before this house proposes to do? Honourable senators, we have no alternative but to accept this motion in amendment. If we do otherwise, we will have a hard time explaining what kind of legislative chamber this is in terms of legislative review.

Hon. Terry Stratton: Honourable senators, why would an amendment to Bill C-25 be brought forward through Bill C-41? Why would the government not bring forward those amendments to Bill C-25 in this chamber? We could study the bill, incorporate the amendments and send it back to the House for adoption, rather than confusing the matter by having the amendments in Bill C-41 and dealing with them there.

It is inconceivable that the correction would not be made in the logical way in which most people would approach the matter. This is, after all, the Senate. Why would we not give the matter logical, sober second thought, put these amendments into Bill C-25 where they belong, and take them out of Bill C-41? That is the logical way to proceed and I would support that action.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion in amendment?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Those in favour of the motion in amendment will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those opposed to the motion in amendment please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "nays" have it.

And two honourable senators having risen:

Hon. Bill Rompkey: Would it be agreeable to have the vote at 3:30 p.m. tomorrow?

The Hon. the Speaker: A vote on a government motion is deferrable. The government and opposition whips have suggested that the vote be at 3:30 p.m., which requires unanimous consent.

Is it agreed, honourable senators, that the vote on the motion in amendment will be at 3:30 p.m. tomorrow, Tuesday October 28, with the bells to ring at 3 p.m.?

Hon. Senators: Agreed.

INCOME TAX ACT

BILL TO AMEND—SECOND READING

Hon. Wilfred P. Moore moved second reading of Bill C-48, to amend the Income Tax Act (natural resources).

He said: Honourable senators, I am pleased to speak at second reading on Bill C-48, to amend the Income Tax Act with respect to natural resources. This bill implements federal income tax changes that were announced in the 2003 Budget for Canada's resource sector. This sector, as you know, comprises the mining, oil and gas and fertilizer industries. Honourable senators will recall that the 2003 Budget was marked by milestones and major new commitments. It was also a budget based on continuity: maintaining the prudent, balanced approach to fiscal planning that has contributed so much to Canada's economic stability and success.

• (1550)

When the Minister of Finance was preparing the 2003 Budget, Canadians told him that they wanted a society built on their commonly held values, an economy that maximizes opportunity for all, and an honest and transparent accounting of government's efforts to achieve those goals.

Budget 2003 responded to this challenge in three ways: first, by building the society that Canadians value by making investments in individual Canadians, their families and their communities; second, by building the economy Canadians need by promoting productivity and innovation while staying fiscally prudent; and third, by building the accountability Canadians deserve by making government spending more transparent and accountable.

Central to today's discussion is the action taken in the 2002-03 Budget to enhance Canada's position as one of the best places in the world to invest and to do business. The 2003 Budget introduced measures that built on the government's five-year \$100 billion tax reduction plan, with further equivalents to the tax system and enhanced incentives to save and invest; measures such as increased assistance for children and low-income families, and increased RRSP and registered pension plan limits.

As well, the budget supported investment and entrepreneurship through changes to the tax system. Many of these changes were contained in Bill C-28, the Budget Implementation Act, 2003, which we debated last spring and which also contained measures of benefit to the resource sector. Bill C-28 eliminated the federal capital tax over five years and increased the amount of qualifying income eligible for the reduced federal small business tax rate. It extended the existing temporary mineral exploration tax credit until the end of 2004, and it provided an additional year for issuing corporations to make expenditures related to these arrangements.

Those measures, together with the changes contained in Bill C-48, would help build on the Canadian tax advantage for investment. Before discussing the elements of Bill C-48, let me take a moment to put the issue of resource taxation in context and to review the need for change.

As honourable senators know, the resource sector is a significant component of the Canadian economy, generating investment, exports and jobs for Canadians. In 2001, for example, the resource sector accounted for almost 4 per cent of Canada's GDP, with over \$64 billion in exports and more than \$30 billion in capital expenditures.

Over 170,000 Canadians work in resource businesses. The sector is important to almost every part of Canada. As well, the potential for future resource development exists in virtually every region of the country. Moreover, Canadian resource industries are large investors in innovative technology and major participants in the provision of exploration and extraction services internationally.

With respect to the current tax structure, income earned in Canada from the extraction and initial processing of non-renewable resources has historically been subject to a series of sector-specific tax provisions. There are three main reasons for these provisions. In the first place, the fact that the development of non-renewable resources can create significant economic and social benefits is a very strong incentive for governments to design a sound economic and fiscal framework for the large capital investments that are required. The second reason is that governments have come to accept that there is a specific set of risks and benefits inherent in the distinctive business of resource exploration and extraction. The third reason is the increasingly intense competition for international investment dollars, which is so critical to the development of our resource industry.

At present, there are several sector-specific income tax provisions that apply to the resource sector. Four provisions — Canadian exploration expenses, Canadian development expenses,

Canadian oil and gas property expenses and capital cost allowance — determine the timing of deductions for capital expenditures. These provisions recognize the risks inherent and the large investments required for resource exploration and extraction, and they also play an important role in ensuring a competitive business environment. The special capital-raising needs of junior exploration firms are recognized by flow-through shares, which allow firms to flow out deductions to individual investors. A 15 per cent mineral exploration tax credit for flow-through share investors was introduced in October 2000 as a temporary measure to moderate the impact of the global downturn in exploration activity on mining communities across Canada. Another provision, the 25 per cent resource allowance, functions as a proxy for actual royalties and mining taxes paid to provinces. Finally, while not specifically targeted to the resource sector, the Atlantic Investment Tax Credit provides significant support for resource sector investment in Atlantic Canada.

Honourable senators, in designing a new federal taxation structure for the resource sector, the government identified three main goals: First, the sector has to be internationally competitive, particularly in North America; second, the tax structure has to be transparent for firms and investors; third, it has to promote the efficient allocation of investment both within the resource sector and between sectors of the Canadian economy. The new tax structure in Bill C-48 will help to achieve these goals. At this time, I should also mention that the government held extensive consultations with the industry when this new tax structure was being designed.

In a global economy with intense competition for mobile capital, a tax system with a lower rate of tax applied uniformly across all sectors, with a simpler and more efficient tax structure, is far more effective than one with a higher rate of tax applied on a less efficient tax base. The new regime introduced in Bill C-48, to be phased in over five years, will ensure that resource sector firms are subject to the same statutory rate of corporate income tax as firms in other sectors and that they will be able to deduct actual costs of production, including provincial and other Crown royalties and mining taxes, rather than an arbitrary allowance.

Let me explain further with respect to the corporate tax rate reduction. The first measure in Bill C-48 reduces the federal statutory corporate income tax rate on income earned from resource activities from 28 per cent to 21 per cent by 2007. As honourable senators know, the corporate income tax rate is often the first piece of information viewed by prospective investors. It is therefore imperative that we have a uniform lower rate if investors are to receive a positive message about our relative competitiveness. In addition, a single rate will reduce compliance and tax administration costs.

With regard to resource allowance, Crown royalties and mining taxes, a second measure in Bill C-48 eliminates the arbitrary 25 per cent resource allowance and provides a deduction for the actual amount of provincial and other Crown royalties and mining taxes paid. The resource allowance was introduced in 1976 primarily to protect the federal income tax base from what were then rapidly increasing provincial royalties in mining taxes, which had been deductible for federal tax purposes. While the fixed allowance puts a ceiling on deductions, it distorts economic signals. In some cases this may result in a bias against investment in more valuable resources, which are more likely to yield a higher royalty return. In other cases, it provides a deduction greater than the actual royalties and mining taxes paid.

As honourable senators are aware, today's economic conditions are different from the environment that existed in the 1970s, thereby leaving the original need for the resource allowance less relevant. Today, there is a greater pressure on producers to be efficient and on host jurisdictions to levy royalties at competitive rates. At the same time, the complexity of the resource allowance calculation has resulted in substantial compliance costs for industry and substantial administrative costs for government. With the implementation of this measure, investment decisions will be based more consistently on the underlying economics of each project.

• (1600)

Another measure Bill C-48 introduces is a new 10 per cent mineral exploration tax credit for corporations that incur qualifying exploration expenses before a mine reaches production in reasonable commercial quantities. This new credit is not to be confused with the 15 per cent temporary mineral exploration credit for investors in flow-through shares that I referred to earlier.

In proposing this new credit, the government has recognized the particular circumstances of the mining sector. This new credit will be available only to corporations and is not refundable or transferable under a flow-through share agreement. It will apply to both Canadian grassroots exploration and pre-production and development expenditures for diamonds, base or precious metals, and industrial metals that become base or precious metals through refining.

I wish to turn now to the transitional measures that are included in the bill. Following the announcement in the budget that the government intended to improve the taxation of resource income, the Minister of Finance released a technical paper on March 3 explaining the proposals. The new measures were to be phased in over a five-year transition period. The government reviewed the proposals with industry and the provinces and subsequently made two changes to the transition provisions of the new tax structure.

The first change will achieve a better measure of taxable resource and non-resource income for the purposes of applying the general corporate rate reduction during the transitional period by utilizing resource pool deductions in the determination of resource income.

The second change targets the Alberta royalty tax credit transitional relief set out in the technical paper to a greater number of small- and medium-sized producers. Both the general five-year transition and the 10-year Alberta royalty tax credit transition will provide investors with the certainty they need when making investment decisions.

Some people have questioned whether the measures in this bill are consistent with Canada's Kyoto commitment to reduce greenhouse gas emissions. They are completely consistent. As I noted, these proposals will result in firms in the non-renewable sector being subject to the same tax rate as firms in other sectors, including the renewable resource sector. They will also be entitled to deduct only actual costs of production instead of the arbitrary resource allowance. These changes will treat investment more consistently, both across projects and between the resource sector and other sectors of the economy. This will ensure that economic activity is allocated more consistently with underlying economic factors.

The oil and gas and mining industries will be called on to play their part in implanting Canada's Kyoto commitment. They will make a significant contribution to a 55-megaton reduction target to the large industrial emitters program.

Renewable energy initiatives figure prominently in the government's Kyoto response. Budget 2003, for example, allocated an additional \$2 billion over five years to support alternative energy technologies that help reduce greenhouse gas emissions.

The budget also supported renewable energy through tax measures. It introduced an excise tax exemption for the ethanol content of blended diesel fuel and bio-diesel. It also extended the accelerated tax depreciation provided for investment in renewable energy and energy efficiency equipment. This regime now covers stationary fuel cell systems and equipment that generates electricity using bio-oil.

Even this bill we are considering today includes a measure to promote renewable energy projects. Bill C-48 promotes the treatment of certain intangible expenditures known as Canadian renewable and conservation expenses. Corporations will be able to reduce these expenses to flow-through share investors in a year where the expenses will be incurred by the corporation only in the following year. This will provide greater flexibility in the timing of renewable energy projects financed using flow-through shares.

Honourable senators, in conclusion, not only will the measures of Bill C-48 result in more competitive tax rates, but they will also result in a more competitive overall tax structure. Together with the elimination of the federal capital tax, which I mentioned earlier, effective tax rates for both the mining and oil and gas industries will be substantially reduced. For oil and gas, this reverses a current disadvantage relative to the United States. For mining, it builds on an existing advantage. In both cases, the changes place the Canadian resource sector in a markedly improved position to attract capital for exploration and development.

In summary, let me say that this new tax structure for the resource sector will achieve what it was designed to do. This new regime contained in Bill C-48 will build upon a Canadian tax advantage to support investment, innovation, productivity, economic growth and jobs for Canadians.

I urge all honourable senators to give their full support to this legislation.

Hon. James F. Kelleher: Honourable senators, I am pleased to join the debate on Bill C-48, which overhauls the tax regime for resource income.

Three and a half years ago, the February 2000 Budget announced that the general federal corporate tax rate would be reduced by seven percentage points, to 21 per cent from 28 per cent, by 2004, but with two notable exceptions. The first exception was manufacturing, which already had a 21 per cent rate. The second exception was the resource sector, where the former finance minister left the rate at 28 per cent on the basis that he wanted to consult with the sector on a new tax structure. He did, however, put in a temporary 15 per cent mineral exploration tax credit that will expire next year.

Mr. Martin then dragged his heels, leaving it to the current finance minister to bring in a technical paper last March. The resource sector has several unique tax rules, and as well as reducing the income tax rate to 21 per cent, Bill C-48 revamps those rules.

One of these is the 25 per cent resource allowance. This dates from the 1975 federal budget and allows a taxpayer to deduct 25 per cent of resource profits with the result that the effective tax rate is reduced to 21 per cent from 28 per cent. This rule replaces the deductions of provincial Crown royalties or mining taxes on the production of natural resources. As a result, such provincial charges currently do not affect federal taxes payable. This bill will phase out the 25 per cent resource allowance by 2007 and phase in a deduction for Crown royalties and mining taxes over the same period, as well as phasing in a new 10 per cent credit for mineral exploration in Canada.

A transitional measure until 2012 will reduce the amount of Alberta royalty tax credit that must be included in taxable income. Other changes are intended to ensure that mining

expenditures qualify as Canadian exploration expenses and for accelerated capital cost allowance if incurred before the mine achieves production in a reasonable commercial quantity.

Finally, the flow-through share rules are amended to provide renewable and conservation expenses with the same one-year look-back treatment given to expenses on non-renewable resources.

• (1610)

This measure was originally announced back in July of 2002. The government tells us that, when fully implemented, this will reduce taxes on the resource sector by \$260 million per year. The government also tells us that Bill C-48 will reduce combined federal and provincial corporate tax rates for the resource sector to below the rates for equivalent industries in the United States. We hope they are right.

Indeed, one wonders why it has taken the government so long to reduce the corporate tax rate on this industry to a level comparable to that of other industries in other countries. To leave that rate at 28 per cent when others are taxed at 21 per cent is discriminatory, insensitive and uncompetitive.

While this bill is positive in the aggregate, we should be concerned that it may actually increase the tax burden on some parts of the resource sector. In this regard, I would draw the attention of honourable senators to the testimony of Mr. Gordon Peeling of the Canadian Mining Association before the Finance Committee of the other place on October 1. He said:

The effect of Bill C-48 on individual commodities, potash, uranium, diamonds, precious and base metals, and the effect on individual companies, both existing operations and proposed new projects, will vary widely, depending on the maturity of assets and the jurisdiction of operation.

The government suggests that the proposed new tax structure will be simpler; streamline tax compliance and administration; send clear signals to investors; improve the competitiveness of the Canadian mining sector; support investment and innovation and productivity, economic growth, and jobs for Canadians.

We are not convinced that all these objectives will be met as fulsomely as both we and the government would like.

He then comments on the effect of phasing out the federal resource allowance by noting that:

One perverse effect of this change is that it will increase taxes paid by the industry in several provincial jurisdictions.

Addressing the issue of whether the provinces will adjust their own tax rules, he then points out:

If provinces do fail to act, the tax competitiveness of key parts of the mining industry will in actual fact worsen, and that worsening will take effect at a time of intense global competition for mining investment.

Base metal and some gold operations concentrated in northern Quebec and Ontario, but also located in Manitoba and Atlantic Canada, will be the most affected. For some companies, their competitiveness will be reduced, even if the provinces do their part. That is a maturity issue...

The impact of Bill C-48 is greatest on mature mines, those less likely to benefit as much from some of budget 2003's other positive measures, such as the phased elimination of the large corporation tax.

He then goes on to point out that unless the provinces act, the combined federal-provincial net income tax changes will increase tax revenues on existing mature mines by as much as 29 per cent in 2007 and that even if the provinces act, the combined income tax changes will be as much as 6 per cent.

He then points out:

Mature mines have substantial invested capital, and they are effectively captive to the changes in the tax rules.

He then further pointed out that the 10 per cent exploration credit introduced with this bill is insufficient to offset the other changes.

Honourable senators, I will support the principle of the bill at second reading, as it does reduce the overall tax burden on this vital sector. However, it cannot be stressed enough that the concerns of the Mining Industry Association need to be given proper examination and that, in committee, we may want to consider amendments to address those concerns.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

The Hon. the Speaker: When shall this bill be read the third time, honourable senators?

On motion of Senator Moore, bill referred to Standing Senate Committee on Banking, Trade and Commerce.

CANADIAN FORCES SUPERANNUATION ACT

BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Wiebe, seconded by the Honourable Senator Maheu, for the second reading of Bill C-37, to amend the Canadian Forces Superannuation Act and to make consequential amendments to other Acts.

Hon. Norman K. Atkins: Honourable senators, it gives me great pleasure to rise today to speak to second reading of Bill C-37, to amend the Canadian Forces Superannuation Act or, as we have referred to it informally, the former pension modernization act.

I congratulate Senator Wiebe, my colleague on the Standing Senate Committee on National Security and Defence, for his speech on second reading, and I identify myself with his remarks on this bill. Being a champion of the reserve forces, he must be very pleased.

This bill had its origins in the 1998 report of the Standing Committee on National Defence and Veterans Affairs in the other place dealing with the quality of life in the Canadian Forces. This is a report that I have addressed previously in the Senate, and I must admit I am pleased to see at least parts of it being implemented by the federal government. This report called for the improvement of compensation and benefits for military personnel, particularly in relation to pensions plan.

The new pension plan implemented by this bill covers pension arrangements for over 50,000 members of the regular forces and approximately 28,000 members of the reserve. With regard to reservists, this bill will mean that long-term, full-time reservists and their regular force counterparts will have equivalent pension arrangements. Also, the groundwork is set out in this bill to develop a pension plan for the more usual case — the part-time reservist.

• (1620)

The vesting of pensions has been brought up to date. As well, pensions will vest after two years. Also, pension credits will now be portable, allowing the accumulated payments to be transferred to other pension vehicles.

The bill will also provide for early pensionable retirement after 25 years' service. As well, early retirement would be possible if the retiree is between 50 and 60 years of age. Also, members who have served for 10 years or more and are released because their health no longer allows them to carry out their military duties will be entitled to an immediate pension. Survivor benefits have also been enhanced to both spouses and children.

Honourable senators, this is a good bill. It brings one aspect, an important aspect, of military life in line with most public service pension plans. As has been pointed out one of the goals of this pension modernization is to help make our Armed Forces more competitive, and to aid in recruitment. Let us modernize the pension plan but let us not forget the other areas where our military is in great need.

I look forward to the discussions on Bill C-37 in committee and would urge members of this place to pass this bill.

Hon. Senators: Hear, hear!

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator Wiebe, bill referred to Standing Senate Committee on Social Affairs, Science and Technology.

PUBLIC SAFETY BILL, 2002

SECOND READING—ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C., for the second reading of Bill C-17, to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety.

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, perhaps I could have some indication from the Honourable Leader of the Opposition, who tells us that this is an important bill, when the opposition will speak to this bill so that I can organize my work accordingly?

Hon. John Lynch-Staunton (Leader of the Opposition): Someone will speak before November 7, 2003.

The Hon. the Speaker: No one has said “stand.”

Senator Kinsella: Stand.

Senator Lynch-Staunton: It is a government bill.

Senator Carstairs: Stand and adjourn it.

Senator Robichaud: I call the question.

Order stands.

BILL RESPECTING THE EFFECTIVE DATE OF THE REPRESENTATION ORDER OF 2003

SECOND READING—DEBATE SUSPENDED

On the Order:

Second reading of Bill C-49, respecting the effective date of the representation order of 2003.

POINT OF ORDER

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators —

Hon. David P. Smith: I am moving second reading of this bill.

Senator Kinsella: Honourable senators, I rise on a point of order.

The Hon. the Speaker: Before the point of order, Senator Kinsella —

Hon. Fernand Robichaud (Deputy Leader of the Government): There is a motion —

The Hon. the Speaker: Senator Smith made a motion that I must put to the house.

Hon. Marcel Prud'homme: It was not seconded by anybody.

The Hon. the Speaker: Senator Smith has put the motion, and I will see Senator Kinsella on the point of order as soon as the motion is put —

Senator Kinsella: I do not want the motion put.

The Hon. the Speaker: —unless it has to do with the appropriateness of the motion.

Senator Kinsella: Honourable senators, I believe that the motion that is intended to be proposed is out of order. I hesitate to stand and raise this point of order because it speaks to the long title of a bill that we received from the other place. The long title of Bill C-49 is An act respecting the effective date of the representation order of 2003. Indeed, the bill at first reading in the House of Commons did just that: It changed the effective date of the proclamation of August 25, 2003, to the first dissolution that occurs on or after April 1, 2004.

Yet, in reading the version that was given first reading in the Senate, I see two additional clauses. Clause 2 amends section 25(2) of the Electoral Boundaries Readjustment Act. This amendment enables returning officers under section 24 of the Canada Elections Act to be appointed and the registration of electoral district associations under subsection 403.22(4) to be deemed effective on the date the proclamation was issued. Clause 3 deems the proclamation to be effective on January 1, 2004.

The issue is not on the merit of the amendments. The issue is that, once again, we have a long title of a bill that does not represent the elements contained therein. There is no reference in the title to an amendment to the Electoral Boundaries Readjustment Act.

If one refers to *Beauchesne's Parliamentary Rules and Forms*, 6th Edition, section 627 states:

...Both the long title and the short title may be amended, if amendments to the bill make it necessary.

Section 627(1) states:

The long title sets out in general terms the purposes of the bill. It should cover everything in the bill.

Honourable senator, we now have a case where the content of a bill has been amended by the House of Commons, but no amendments were made to the title of the bill. We cannot tell from the long title of Bill C-49 that the Electoral Boundaries Readjustment Act is being amended. The members of the other place, in their haste, again, to ram this bill through, possibly because of a magic date, ignored the basic principle that the long title of a bill should cover everything in the bill, and if amendments are made to the bill, the title should also be amended.

The government house leader in the other place...

The Hon. the Speaker: Honourable senators, it being 4:30 p.m., pursuant to the order adopted by the Senate on Thursday, October 23, 2003, it is my duty to interrupt the proceedings for the purpose of putting the deferred vote on the motion for second reading of Bill C-34, moved by the Honourable Senator Carstairs.

Pursuant to the agreement, the bell to call in the senators will sound for 30 minutes.

Debate suspended.

• (1700)

PARLIAMENT OF CANADA ACT

BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Graham, P.C., for the second reading of Bill C-34, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

Motion agreed to and bill read second time on the following division:

YEAS THE HONOURABLE SENATORS

Adams
Bacon
Banks
Biron
Callbeck
Carstairs
Chaput
Cook
Cordy
Day
De Bané
Downe
Fairbairn
Finnerty
Fraser

Lavigne
Léger
Losier-Cool
Mahovlich
Massicotte
Merchant
Milne
Morin
Pearson
Phalen
Plamondon
Poulin
Poy
Prud'homme
Ringuette

Graham
Hubley
Jaffer
Kenny
Kolber
LaPierre
Lapointe

Robichaud
Roche
Rompkey
Smith
Trenholme
Counsell
Wiebe—43

NAYS THE HONOURABLE SENATORS

Andreychuk
Atkins
Beaudoin
Cochrane
Comeau
Doody
Forrestall
Johnson
Kelleher
Keon

Kinsella
LeBreton
Lynch-Staunton
Meighen
Nolin
Robertson
Spivak
St. Germain
Stratton
Tkachuk—20

ABSTENTIONS THE HONOURABLE SENATORS

Cools
Corbin
Ferretti Barth

Gauthier
Joyal
Maheu—6

REFERRED TO COMMITTEE

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I move, seconded by Honourable Senator Stratton:

That Bill C-34, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence, be not now read the third time but that it be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I rise to speak to the motion.

The Hon. the Speaker: First, I will put the motion and the relevant rule.

It is moved by Honourable Senator Kinsella, seconded by Honourable Senator Stratton, that Bill C-34 be not now read the third time but that it be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

Honourable senators, this is not a debatable motion. I will read rule 67(5) of the *Rules of the Senate*:

When a deferred vote is requested on one question that is the first of a series of questions to be put to the Senate without further debate, the bells to call in the Senators shall be sounded once; they shall not again be sounded, at that sitting, in relation to any subsequent standing vote on the same item of business.

Perhaps the deputy clerk could provide the house with the reference number that indicates that motions referring a bill to committee following second reading are not debatable. I refer honourable senators to rule 62(1) of the *Rules of the Senate*, which states:

Except as provided elsewhere in these rules, the following motions are debatable:

Without reading each motion, unless it is the wish of honourable senators, I would say that this motion does not fit under one of the motions described in the rule. Accordingly, I put the question to honourable senators now.

POINT OF ORDER

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): I rise on a point of order. The rule that His Honour refers to speaks to the motion at second reading and then to the motion to refer the bill to committee. We have no objection to the bill being referred to committee. We have substantive objection in respect of procedure as to which committee it would be referred. There is a major distinction between asking that this bill be not now read the third time but that it be referred to committee, and to which committee the bill is referred. Last week, the Chair of the Rules Committee made statements to the effect that led some honourable senators to the conclusion, and some members of that committee said, that preparations were being made by the Rules Committee to receive Bill C-34. We will argue on a point of order that the Rules Committee is not a legislative committee and that legislative committees are comprised of 12 members. The Rules Committee is a management committee, as is the Internal Economy Committee, which has 15 members.

• (1710)

There is a substantial difference between the Rules Committee and the Internal Economy Committee, on the one hand, and our legislative committees, on the other hand, which we call Senate standing committees. In the other place — and one can refer to Beauchesne at page 222, where that distinction is made — they sometimes set up a special legislative committee. That is not what we do. We define the bills that will be referred to given committees in the very definition of the committee in our rules. For example, rule 86(1)(f) speaks to the Rules Committee being composed of 15 members, but there is absolutely no reference in rule 86(1)(f)(ii) to legislation being referred to the Rules Committee.

We find the phrase “and also to study bills” among the charges the legislative committees or standing committees have. The issue of whether or not this question could fall under residual matters does not apply — rule 86(2) — because clearly Bill C-34 is not a residual matter. It is a substantive matter of legislation.

Furthermore, rule 86(3) — and this is perhaps the most important one — speaks to legislative committees being composed of 12 members.

Rule 86(1)(k) defines the mandate of the Standing Senate Committee on Legal and Constitutional Affairs. It is explicit that bills relating to legal and constitutional matters are to fall under the mandate of that committee.

In terms of orderliness, this motion is not only in order, but the counter-argument, where we cannot have a debate, is that the Rules Committee is certainly not the committee to which the bill can be referred.

The Hon. the Speaker: Before I hear more on the point of order — and I will hear more — we have just concluded a vote on second reading of Bill C-34. We are operating under the rule that I read, which requires us to deal sequentially with all matters to dispose of it, including the one before us. They are not subject to any delay in terms of votes.

We have a motion before us by Senator Kinsella. He has spoken to a point of order that I think is prospective, that if this bill were referred to the Rules Committee, as some senators have anticipated in debate, that that would not be in order because it is not a committee that could study the bill. I want to keep track of these events.

I want to emphasize to all honourable senators that we are obliged to dispose of all matters relating to the order that was adopted.

I will hear senators because I think this is an issue. The Leader of the Government in the Senate wishes to speak, as does another senator.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I will speak to the point of order raised by Senator Kinsella because I totally disagree with all of his statements. While the honourable senators says the that Rules Committee is not a standing committee, rule 86(1) begins with, “The standing committees shall be as follows,” and lists the Standing Committee on Rules, Procedures and the Rights of Parliament as a standing committee of this house. In addition, when the rule defines the mandate of the committee, paragraph 86(f)(iii) very clearly states:

to consider the orders and customs of the Senate and privileges of Parliament.

Nothing could be more appropriate in terms of our discussion on orders and customs of the Senate and privileges of Parliament, as we have listened to the debate and discussions, than this particular piece of legislation.

We also, of course, sent the draft piece of this legislation to the Standing Senate Committee on Rules, Procedures and the Rights of Parliament. That, in itself, would recommend that this bill clearly be referred to the Rules Committee and not to the Legal and Constitutional Affairs Committee. Never mind the fact that the Standing Senate Committee on Legal and Constitutional Affairs already has a number of items on its agenda, and I think we all want this bill to be debated as quickly as possible in committee. I do not think there is a point of order on this matter, although I would recommend to all honourable senators that they vote against the motion.

Hon. Tommy Banks: Honourable senators, I rise to speak to His Honour's reference to rule 62. Rule 62(2) states — and if I understood correctly, I think this is what His Honour was getting at:

All other motions, unless elsewhere provided in these rules or otherwise ordered, shall be decided immediately upon being put to the Senate, without any debate or amendment.

Preceding that is the list to which Your Honour referred, which talks about those bills that are debatable. Is not the present motion, one which would be referred to under rule 62(1)(f) — that is to say, instructions to a committee — therefore debatable?

The Hon. the Speaker: I will take that as a question, Senator Banks. The answer is yes and no; yes because you have described it correctly, but no because there are other rules that apply to the situation we find ourselves in now, which is that this is a matter subject to order of the house pursuant to the time allocation rules. Therefore, I will go back to Senator Kinsella and Senator Carstairs' point. Senator Cools wishes to speak about it.

Hon. Anne C. Cools: I would ask His Honour to repeat something he said a few minutes ago. I believe he stated the order to the chamber and read the rule that requires the disposition of every aspect of Bill C-34. I wonder if he could read that again. I thought that the rule and the order essentially refer to the disposition of everything to do with second reading. In my view, we have passed second reading and we are now moving on to a totally different stage of the debate. Perhaps His Honour could read the very rule and the order that he is bound to obey.

I would contend, honourable senators, that His Honour is bound to obey the order that says the issues around second reading are to be disposed of by a particular time. There was a vote 10 minutes ago and that matter was disposed of and voted upon. In point of fact, His Honour cannot comment on that vote. We have moved past it.

We are now on the motion to consider whether we move on to third reading directly. I believe the motion that Senator Kinsella made is that we not now read the bill the third time but that we refer it to a particular committee. Therefore, in actual fact, we have moved past second reading. We are now discussing whether we want to debate the bill at third reading or whether we want to send the bill to committee. Could His Honour clarify the matter for all of us and read again the order which he is bound by and also read the rule itself?

The Hon. the Speaker: It is more on the matter of clarity than it is on the question of order that Senator Kinsella and Senator Carstairs have spoken to. I will read the provisions of rules 67(4) and (5).

(4) When a deferred vote has been taken and there is subsequent business to be disposed of, any standing vote requested in relation thereto shall not be deferred and the Speaker shall proceed to put forthwith and successively every question necessary to dispose of the business.

(5) When a deferred vote is requested on one question that is the first of a series of questions to be put to the Senate without further debate, the bells to call in the Senators shall be sounded once; they shall not again be sounded, at that sitting, in relation to any subsequent standing vote on the same item of business.

• (1720)

I have just read rule 67(4) and 67(5). That would be my answer to the point you are raising. I said earlier that I consider the house to be dealing now with the business that the order related to in terms of having to deal successively with the questions so that we can dispose of the matter.

Senator Cools: I am telling you, Your Honour, that the question has been dealt with and the question has already been voted on. In point of fact, your order is exhausted. We have now moved on to a new stage of debate, which is third reading. I do not see that you can just simply apply an order that concerns second reading debate and a vote at second reading. Your Honour cannot simply apply that to third reading. In point of fact, we are on third reading debate, because the motion is a routine motion that is moved after votes at second reading. The question now before the chamber is whether we proceed to third reading, or whether or not we commit the bill to committee.

What I am trying to say, Your Honour —

The Hon. the Speaker: I will rule on that. We have disposed of the second reading vote. We now must take the next step. The next step has been proposed. It is a motion put forward by Senator Kinsella, seconded by Senator Stratton, that this bill be referred to the Standing Senate Committee on Legal and Constitutional Affairs. That is something that we will either put to a vote or not, but Senator Kinsella has raised another matter that might be relevant if someone moves that this bill be referred to the Standing Committee on Rules, Procedures and the Rights of Parliament.

Honourable senators, because this matter is both important and expected, I am hearing the positions of honourable senators on it. I have heard from Senator Kinsella and Senator Carstairs. Do any other senators wish to comment on that problem?

Some Hon. Senators: Question!

Senator Kinsella: In conclusion, I take it that the interpretation that is being suggested we give to rule 67(4) is that, when a deferred vote has been taken — which has been taken — it does not specify subsequent business. What subsequent business are they talking about? The matter of second reading, to which time allocation had applied, has been met. We had a vote. The clerk rose from the table and said that the bill is now read the second time. The question is then called, “When shall the bill be read the third time?” and I moved that, no, it not be read the third time. That is not subject to time allocation. I do not think rule 67(4) can be read in the way in which, perhaps, some are reading it.

We all understand that, under time allocation, all motions, including the main motion, have to be disposed of successively. Whether it be closure brought at second reading, at committee stage or at third reading, the closure that was brought at second reading has been concluded. We are now into third reading, and I am suggesting with my motion that we not proceed to third reading but, rather, that we send the bill to committee.

Honourable senators, unlike the House of Commons, the motion at second reading is not inclusive of a motion to refer. In the House of Commons, the motion at second reading is inclusive of the motion to refer to committee. In this place, it is a separate step: We decide whether or not to send the bill to committee. In this case, we are deciding, yes, we should send it to committee, and we on this side of the house are proposing that it go to the Legal and Constitutional Affairs Committee.

However, I do not think the house can rely on rule 67(4) to suggest that this is not a new matter but that, somehow, it is a matter tied to the time allocation.

Senator Carstairs: Honourable senators, with the greatest of respect, it is tied; otherwise, we would be in a state of limbo with respect to second reading. We have passed second reading and there must be another step to deal with where the bill goes now. Where the bill goes now is that it either proceeds to third reading, in which case we would do without the committee stage, or we could refer it to a committee. That is what we are purporting to do now through the honourable senator’s motion, namely, to refer it to a committee. I just happen to think the honourable senator has chosen the wrong committee.

Senator Banks: Honourable senators, I am seeking instruction again. It seems to me that the argument in respect of the point of order has moved to questions that are not before us. The motion that is before us is that the bill not be read the third time now, but

that it be sent to the Standing Senate Committee on Legal and Constitutional Affairs. It seems to me the only question before us is the one to which Your Honour referred earlier, as to whether or not that motion is debatable. If it is not, we are on a vote.

The Hon. the Speaker: No, it is not debatable. We are on a point of order, though. I have indicated to the chamber at what stage I thought we had reached. I was prepared to deal with the point of order on whether the Standing Committee on Rules, Procedures and the Rights of Parliament is the one to which the bill should be referred, which is Senator Kinsella’s point of order.

However, he has now raised a point of order that I should resolve first, namely, that there is a view that rule 67(4) and 67(5) did not require all matters to be disposed of now. Senator Carstairs has commented on it. I think I should resolve that before I go to the other point of order, and I will ask for five minutes to confer. I will rule on that matter, and then we will go to the point of order that Senator Kinsella first raised.

The sitting of the Senate was suspended.

• (1730)

The sitting of the Senate was resumed.

SPEAKER’S RULING

The Hon. the Speaker: Honourable senators, I will try to dispose of both the points of order, and it may be somewhat repetitive, but my ruling is as I said it would be. By saying that, I mean as I had indicated as a statement where I thought we had reached in our proceedings. That was then questioned as a point of order and now I feel obliged to now dispose of that question because it was so questioned and commented on by Senators Kinsella and Carstairs, and I thank them for the point of order and for their comments.

The question is: Are we obliged, under our rules, to now dispose of all matters with respect to what we are in the process of doing pursuant to the order of time allocation; to deal with, as we have, the vote on second reading, as well as the next step, to dispose of the matter, and that is either to proceed to third reading, which is an option, or to refer the bill to a committee, which is the other option that we follow, and which in fact has been done: that we vote on that and on any subsequent motion until we dispose of it without bells because of the provisions of rule 67?

I again refer honourable senators to rules 67(4) and 67(5). If you wish, I will read them again, but the effect of the rule is that we do that because we are under order to dispose of all stages, and the bells to do that are to be sounded only once. I am referring to clause 67(5). That is my ruling, and I will pause to see if honourable senators are in agreement.

As to the second point of order, which is really an anticipatory question of whether or not it would be in order for the house to refer the bill to the Standing Committee on Rules, Procedures and the Rights of Parliament. It is a little unusual to anticipate a question such as that. However, in this case I believe that the rules are clear, and I will read from rule 86(2), which states:

Any bill, —

We are discussing a bill.

— message, petition, inquiry, paper or other matter may be referred, as the Senate may decide, to any committee.

The committees are listed, and I will not specify any one of them, but those committees that are listed in our rules would be covered by the words “any committee” in rule 86(2).

Honourable senators, we are now on the motion put by Senator Kinsella, seconded by Senator Stratton, and I will read it, because we have had a lot of things happen in the meantime:

That Bill C-34, an act to amend the Parliament of Canada Act, Ethics Commissioner and Senate Ethics Officer, and other acts in consequence, be not now read a third time but that it be referred to the Standing Senate Committee on Legal and Constitutional Affairs.

Will those honourable senators in favour of the motion please say “yea”?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the motion please say “nay”?

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the “nays” have it.

And two honourable senators having risen:

The Hon. the Speaker: A division is being requested. I will ask the table to poll senators on the division.

Motion negated on the following division:

YEAS THE HONOURABLE SENATORS

Adams
Andreychuk
Atkins
Bacon
Banks
Beaudoin
Cochrane

Kinsella
Kroft
LeBreton
Lynch-Staunton
Maheu
Meighen
Moore

Cools
Corbin
Ferretti Barth
Forrestall
Joyal
Kelleher

Nolin
Prud'homme
Robertson
Spivak
Stratton
Tkachuk—26

NAYS THE HONOURABLE SENATORS

Biron
Callbeck
Carstairs
Cook
Cordy
Day
De Bané
Downe
Fairbairn
Finnerty
Fraser
Graham
Hubley
Jaffer
Kenny
Kolber

LaPierre
Lapointe
Lavigne
Massicotte
Merchant
Milne
Morin
Phalen
Poulin
Poy
Ringuette
Robichaud
Rompkey
Smith
Trenholme Counsell
Wiebe—32

ABSTENTIONS THE HONOURABLE SENATORS

Mahovlich
Pépin

Plamondon—3

The Hon. the Speaker: Senator St. Germain, did you wish to rise to abstain?

Hon. Gerry St. Germain: No, Your Honour. I was not in here and the bells did not ring, so I would like to raise a point of order later.

The Hon. the Speaker: That can be done later.

Senator Carstairs: Honourable senators, I move that, instead of third reading of this bill, we refer the bill to the Standing Committee on Rules, Procedures and the Rights of Parliament.

Senator St. Germain: I have a point of order.

The Hon. the Speaker: I must first dispose of all of these matters, and then I will deal with the honourable senator's point of order.

Senator Cools: On his point of order, Your Honour, as well as to what just happened, you cannot move on to —

[The Hon. the Speaker]

REFERRED TO COMMITTEE

The Hon. the Speaker: I am in the process of putting a motion to the house.

• (1740)

It was moved by the Honourable Senator Carstairs, seconded by the Honourable Senator Robichaud, that the bill be not now read the third time but that it be referred to the Standing Committee on Rules, Procedures and the Rights of Parliament.

Will those honourable senators in favour of the motion please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those honourable senators opposed to the motion please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "yeas" have it.

And two honourable senators having risen:

The Hon. the Speaker: I will ask the senators to be polled.

Hon. John Lynch-Staunton (Leader of the Opposition): Your Honour, the doors are opening and closing while we are having a vote, which is out of order. The doors must be kept shut during the vote. No one is allowed in and no one is allowed out, and that has not happened.

The Hon. the Speaker: I have not been watching the doors, honourable senators, but it has been raised as an important matter. I will put the question again in a moment. I will interrupt to refer to the appropriate rule so that I can deal with it.

Rule 66(4) states:

The doors of the Senate shall not be locked during the taking of standing votes. Senators may enter the Chamber at any time but no Senator shall vote who was not within the Bar of the Senate when the Speaker puts the question. Senators shall vote only from their place in the Senate.

Honourable senators, I was not watching the door, but clearly our rules provide that the door can be opened or closed, and senators can come in, but they cannot vote unless they were within the bar when the vote was called.

I will pause for a moment to allow senators who are objecting to anyone who did vote or who is here improperly to do so.

Hon. Gerry St. Germain: On a point of order, honourable senators, I came into the chamber during the vote. I did not vote. I have a question to ask. Why was not at least one bell rung to advise senators that a vote was taking place? This seems totally unfair. If you have a weak bladder, you can be virtually destroyed, lose a vote, and change the history of the country.

The Hon. the Speaker: This point of order has arisen before, Senator St. Germain, and I will attempt to answer your question by reference to the rules. They provide that when we are under a time allocation order, all votes with respect to the matter be taken sequentially and that the bells be sounded only once. The bells were sounded from 4:30 to 5 p.m., and that bell was sounded for all votes with respect to the disposition of all stages of the bill that was subject to the time allocation order.

Motion agreed to and bill referred to the Standing Committee on Rules, Procedures and the Rights of Parliament on the following division:

YEAS
THE HONOURABLE SENATORS

Biron	LaPierre
Callbeck	Lapointe
Carstairs	Lavigne
Cook	Massicotte
Cordy	Merchant
Day	Milne
De Bané	Morin
Downe	Phalen
Fairbairn	Poulin
Finnerty	Poy
Fraser	Ringuette
Graham	Robichaud
Hubley	Rompkey
Jaffer	Smith
Kenny	Trenholme Counsell
Kolber	Wiebe—32

NAYS
THE HONOURABLE SENATORS

Adams	Kroft
Andreychuk	LeBreton
Atkins	Lynch-Staunton
Bacon	Maheu
Banks	Meighen
Beaudoin	Moore
Cochrane	Nolin
Cools	Prud'homme
Corbin	Robertson
Ferretti Barth	Spivak
Forrestall	St. Germain
Joyal	Stratton
Kelleher	Tkachuk—27
Kinsella	

ABSTENTIONS
THE HONOURABLE SENATORS

Mahovlich	Plamondon—3
Pépin	

Senator Lynch-Staunton: Your Honour, my earlier objection just before the vote was based on an interpretation of the rules which was completely wrong. I apologize to you and my colleagues for that interruption. It was completely out of order. Next time I will consult the rules before being so abrupt and know-it-all.

CHILDREN OF DECEASED VETERANS EDUCATION ASSISTANCE BILL

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-50, to amend the statute law in respect of benefits for veterans and the children of deceased veterans.

Bill read first time.

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for second reading two days hence.

BILL RESPECTING THE EFFECTIVE DATE OF THE REPRESENTATION ORDER OF 2003

POINT OF ORDER—DEBATE SUSPENDED

On the Order:

Second reading of Bill C-49, respecting the effective date of the representation order of 2003.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, we were on Bill C-49, and I was raising a point of order and speaking to the error in the bill in terms of its title.

• (1750)

I had been citing some of the procedural literature and precedents. Let me pick up with Speaker Sauvé's ruling in the other place on July 20, 1982, which you will find at page 19866 of *Hansard*. It says clearly that the long title should be amended when amendments of substance are made to the bill. Speaker Sauvé said as follows:

The long title sets out, in general terms, the purposes of the bill and should be amended only if and when amendments of substance are made to the bill which would necessitate as a consequence changes to that title. For the benefit of the honourable member, I refer him to page 465 of May's which reads in part,

Both the long title and the short title are amended, if amendments to the bill make it necessary.

Honourable senators, the question then before us is: Do the amendments that were made in the other place make it necessary to amend the long title of the bill? My position is that these amendments were substantive: they were not formal; they were substantive — and that the title of the bill should have been amended. The amendment to the Electoral Boundaries Readjustment Act changes how and when returning officers are appointed and when electoral district associations come into effect. These are substantive changes. They are major changes to the wording of the present act.

Honourable senators, let us review again the long title of Bill C-49. It says:

An Act respecting the effective date of the representation order of 2003

Let us look at the representation order of 2003. It states:

And whereas section 25 of the Electoral Boundaries Readjustment Act provides that, within five days after the receipt by the Minister of the draft representation order, the Governor in Council shall by proclamation declare the draft representation order to be in force, effective on the first dissolution of Parliament that occurs at least one year after the day on which the proclamation was issued, and on the issue of the proclamation the order has force of law accordingly;

The date of that proclamation, honourable senators, is August 25, 2003. Nowhere in that proclamation is there mention of section 24 of the Electoral Boundaries Readjustment Act in the representation order referred to in this bill.

Last week, honourable senators will recall that we had a ruling from the Speaker of the Senate, who ruled on the long title of Bill C-41. His Honour, at that time, observed at page 2203 of the *Debates of the Senate* on October 22, 2003:

While it is admitted that a title is important with respect to determining the scope of a bill and the amendments that can be proposed with respect to it, this can be somewhat less important in the case of amending bills intended to correct a battery of statutes. This is because amending bills do not have the same integrity as a bill that constitutes an original act.

Honourable senators will recall the Senate accepted that ruling of our Speaker. Therefore, we should see what that means when it is applied to this bill. This bill is not designed to correct, to use the words of our Speaker, "a battery of statutes." Rather, honourable senators, this bill is designed to change the effective date of a representation order. In doing so, our colleagues in the other place have added substantive changes to a statute that is not reflected in the long title of this bill that is before us. The correct action should have been a further amendment to the long title of the bill in the other place. That did not happen. In effect, the Senate has now received an imperfect bill.

Honourable senators, it has been argued in the past that if the long title of the bill is defective, the bill should not proceed to second reading. It was not the Senate that neglected to make amendments to the long title of the bill. Rather, it was members of the other place who were negligent — and if I might add, negligent once again. Furthermore, it would not be right, in our consideration of this bill, to amend the long title if we have not made any amendments to the contents of the bill.

This bill should be removed from our Order Paper and returned to the House of Commons. Speaker Fraser from the other place, on July 11, 1988 in *Hansard* at page 17382 to 17384, said this about the Senate's power:

There is not any doubt that the Senate can amend a bill, or it can reject it in whole or in part.

Speaker Lamoureux from the other place, in his ruling of June 12, 1973, rejected a Senate public bill and ordered it removed from the Order Paper.

Honourable senators, this bill should be rejected. I urge you to find this bill imperfect in form; and that our Speaker should so rule that it be removed from the Order Paper.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I thank the honourable senator for his comments. He will not be the least bit surprised that I do not agree with any of them.

The interesting part about this particular bill, respecting the effective date of the representation order of 2003, is that it has to do just that. It is an act respecting the effective date of the representation order of 2003. That is, in essence, all it does. It changes the effective date of when a writ can be dropped or when a writ cannot be dropped.

The honourable senator seems, in the last few weeks, to not like the title of any particular bill. Last week, and perhaps even continuing today, we have had a number of points of order on Bill C-41. The Speaker had some interesting things to say with respect to title. He said, for example, that while it is admitted that a title is important with respect to determining the scope of the bill and the amendments that can be proposed with respect to it, this can be somewhat less important in the case of amending bills to correct a battery of statutes. This is because amending bills do not have the same integrity as a bill that constitutes an original act. This is an amending bill. That is all it does.

Once enacted, the Speaker went on to say, the content of an amending bill is absorbed into the various acts to which it applies. This is exactly what would happen: this would be an amendment to the representation order that was passed earlier.

Honourable senators, we have a situation here where the honourable senator has argued that, somehow or other, the House of Commons cannot make amendments to bills without

changing the title. With the greatest of respect, they make substantive amendments — as we make substantive amendments — to a number of pieces of legislation, and neither we nor they change the title.

Honourable senators, and you in particular, Your Honour, I would ask that you rule that this long title is perfectly in order, and that there is not a valid point of order.

The Hon. the Speaker: Honourable senators, I rise to draw your attention to the clock. It is now six o'clock. Is it your wish that I not see the clock, honourable senators?

Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker: There is not unanimous consent, honourable senators, and accordingly, I must see the clock. I will leave the Chair until 8 p.m.

The Senate adjourned until 8 p.m.

• (2000)

The sitting of the Senate was resumed.

CRIMINAL CODE

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-45, to amend the Criminal Code (criminal liability of organizations).

Bill read first time.

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for second reading two days hence.

BILL RESPECTING THE EFFECTIVE DATE OF THE REPRESENTATION ORDER OF 2003

POINT OF ORDER

On the Order:

Second reading of Bill C-49, respecting the effective date of the representation order of 2003.

The Hon. the Speaker: Honourable senators, at 6 p.m., I believe we were on a point of order. I believe Senator Lynch-Staunton had the floor.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I will continue, but I am sorry that I do not see here those who should be listening to this argument. I understand there is an event going on at this time that I also would have liked to attend. It is unfortunate that we did not see the clock at six o'clock so that we could all be there to support a very worthwhile event.

On this point of order to which Senator Carstairs objected, I want to point out that there is a significant difference between the objection we made to the title of another bill and the objection that we are making to the title of this bill. In the other case, the House did not pass any amendments to Bill C-41. While we feel that the long title is not in order, at least the argument was that when the bill came here, it came in its original state, as the House was first introduced to it.

In the case of this bill, Bill C-49, it was given two amendments in the House. One was to amend the Canada Elections Act and the Income Tax Act. We have in the same bill, after it was first introduced, an amendment brought at second reading, following a report of the committee — a significant amendment having nothing to do with the representation order. Senator Carstairs argued that only the representation order amendment was included in this bill. I sensed that perhaps she had read the original bill, which in effect had only one clause: that is, directly related to the title, or vice versa. The title directly refers to it, respecting the effective date of the representation order. That clause remains.

After that, however, two more clauses were added before the bill came to us. One was an additional amendment to the Electoral Boundaries Readjustment Act; the other one, which I just mentioned, was an amendment to the Canada Elections Act. The argument is that the long title should have been changed to say, "An Act Respecting the Effective Date of the Representation Order of 2003 and an amendment to the Canada Elections Act and the Income Tax Act." That is the difference between the argument we gave on Bill C-41 regarding the long title and the argument being presented here by Senator Kinsella.

Senator Robichaud asked me earlier today when I would be speaking to Bill C-17. I said, "By November 7." He may have sensed a little sarcasm in that reply that was not intended. The fact is that Bill C-17 is a very complicated bill, and we received a briefing book for all senators. The briefing book has a backgrounder on the bill; a bill summary; a clause-by-clause analysis of each act to be amended, of which there are 23; another explanatory note; and it is in two languages, as it should be.

This is indirectly related to the point of order, but it is an opportunity to raise it here. I have the briefing book prepared on this bill, Bill C-49. It is called "the opposition briefing book." We have never had an "opposition briefing book" before. We usually get briefing books from the ministry and the department involved. The first page is a copy, not of the final bill but of the bill as

amended by the committee of the House and submitted to the House for final approval — not even the final bill. I suppose we can assume that this is the final bill, but it would have been nice to have the bill as voted by the House of Commons. There is then a press release, dated September 15, 2003, announcing the original bill, before there are any amendments. Finally, there is another press release giving the backgrounder on Bill C-49. In fact, it is not a briefing book at all; it is a throw-away. That is exactly what I will be doing with it.

Honourable senators, I find it insulting to be given in this chamber this thin, useless book and, in addition to that, it is prepared in only one official language! This is an opposition briefing book only in one language. It should be a briefing book for all senators. It should have been prepared by the department or the minister involved, and it should have been presented to us in a more thorough fashion, with a clause-by-clause explanation like most briefing books. This one is not. That has little to do with the point of order, but at least it gets it out of my system, because I was very annoyed, not only on my own behalf but also on behalf of all colleagues to see —

Senator Robichaud: Get it all out!

Senator Lynch-Staunton: You can laugh all you want, Senator Robichaud —

Senator Robichaud: I am not laughing.

Senator Lynch-Staunton: — but it is not funny to get an official document from the government in only one language. Do you find that funny?

Senator Robichaud: No. Absolutely not.

Senator Lynch-Staunton: All right. That was the point I was making within the argument on the point of order.

The main argument is that the point of order raised here is different from the one raised on Bill C-41 — although it refers to the long title — because amendments were made in the House and the long title was not changed, but it should have been. For that reason alone, the bill should be rejected.

The Hon. the Speaker: Senator Lapointe, do you want to speak to the point of order?

Hon. Jean Lapointe: Honourable senators, I have a single question.

The Hon. the Speaker: This is not the time for debate; only for comment on the question of whether or not this point of order is valid.

[Translation]

Hon. Marcel Prud'homme: Honourable senators, I would like to follow up on what the Leader of the Opposition just said — or more formally Her Majesty's Loyal Opposition. After 40 years, I am learning that there are documents circulating for the majority and others for the minority. I do not represent the opposition.

• (2010)

I sit here in my corner, sometimes quietly, and sometimes less quietly. But if it is true that such documents are available — for and against — I wonder what Senators Plamondon, Roche, Lawson and Pitfield are doing here. What are we doing here? A good friend of Senator Fairbairn used to say that all senators are equal. I am therefore shocked when this kind of thing happens. Let me tell you something: you have not heard the last of me this evening.

[English]

The Christmas tree is already there, as if we were at the end of November. Perhaps there are things I do not understand because I am getting old, but are we in October, Senator Chaput, or are we at November 29? I do not know. I see the Christmas tree already there. It does not shock me; I believe in it.

[Translation]

Frankly, if there are indeed documents, should they not be made available to all honourable senators?

[English]

Honourable senators, I want to tell you one thing tonight. I do not give lessons to anyone and I do not take lessons from anyone. You will hear that later on tonight. I will speak on this motion because I am a Pearson boy, even though I disagree with certain of his policies.

[Translation]

To me, the Elections Act has always been sacred, beyond the control of politicians — and I have known both systems. It used to be that the electoral maps were designed by members of Parliament. They could say: "Give me this street corner in exchange for that parish". Mr. Pearson said: "That is enough. We are going to have a fine Elections Act that is beyond the control of politicians". I want to address this bill. However, I am currently speaking on the point of order of the Deputy Leader of the Opposition.

[English]

The Hon. the Speaker: I thank honourable senators for their interventions on the point of order raised by Senator Kinsella and spoken to by a number of senators. This point of order is quite

similar to the matter on which we had a ruling earlier — similar enough that the principles are basically the same. It is something with which I should be able to deal, and I intend to rule now.

I have also benefited from the two-hour break in terms of having had an opportunity to review the matters that I have noted from the interventions, for which I thank all senators. I have also had a chance to consider the differences that are being put to me in terms of distinguishing this point of order from a similar matter where I ruled that there was no point of order, essentially because the deficiency complained of in the bill is something for the Senate as a whole to address and remedy by way of amendment rather than something that should be directed to the Speaker of the Senate in terms of having the matter taken off the Order Paper for procedural reasons.

In this case, the Senate has received a message from the House of Commons telling us that it has passed Bill C-49. Bill C-49 has received first reading in the Senate. The Senate has ordered that it be placed often the Orders of the Day for second reading. I recognize, however, that this initial stage is pro forma.

The point of order is essentially that the bill is deficient because the title is not complete and fully descriptive and that it is distinguished from the previous ruling on a similar matter. Honourable senators are asking me, in effect, to pass judgment on the decision of the House of Commons that adopted Bill C-49 and the way in which it was received by us and is presented here today on our Order Paper.

As Speaker of the Senate, I have no authority to rule on decisions of the House of Commons. This point is referred to in the previous ruling, and I would like to further substantiate it by referring to a newer text than the one we normally use. It is of no less authority, and it is of great interest to us. That is Marleau and Montpetit, *House of Commons Procedure and Practice*. I am looking at page 674, the section entitled "Passage of Senate Amendments (If Any) by the House of Commons." The observation is made there that, "It is not for the Speaker of the House of Commons to rule as to the procedural regularity of proceedings in the Senate and of the amendments that it makes to bills." I could go on because the section does refer to amendments, but I think by direct analogy it refers to the general principle of questioning what has taken place here by way of the procedures we have followed.

The principle followed in the other place is clear, and I think the rationale for that decision is the same for this place. We have no power to change or remedy, other than through amendment and through the sending of messages. Accordingly, I do not think this is something that the Chair has any power to remedy; rather, this is for the Senate as a whole to address in the way that it normally does — by message, indicating an amendment, and, of course, the Senate can amend the title to a bill.

My ruling on this question is that it is sufficiently the same as the matter already ruled on, that the same principles apply. The question is not for the Speaker of the Senate to address by way of having withdrawn a bill such as the one before us because of a deficiency in the title, but rather it is a question for the Senate as a whole to address, if it believes that it is necessary to do so, by way of amendment.

Accordingly, I rule that there is no point of order and that we now return to debate on Bill C-49.

SECOND READING—DEBATE ADJOURNED

Hon. David P. Smith: Honourable senators, I move second reading of Bill C-49.

The Hon. the Speaker: Since the point of order was raised prior to the motion being made, I will now put the motion.

It is moved by the Honourable Senator Smith, seconded by the Honourable Senator Léger, that bill C-49 be read the second time.

Does the Honourable Senator Smith wish to speak?

Senator Smith: Honourable senators, I am pleased to sponsor and open the debate in the Senate on Bill C-49, respecting the effective date of the representation order of 2003.

Senator Lynch-Staunton: That is all it is?

Senator Smith: That is all it is. This bill is very succinct. It is to the point. It originally was only one clause, and then the second and third clauses were added by the political marriage partners of the proposed conservative party. They were amendments brought in by the Alliance —

• (2020)

Senator Robichaud: Who? Who?

Senator Smith: — which were adopted by the government and agreed to.

Senator Kinsella: Your point is?

Senator Smith: This bill is about protecting the quality of our representative democracy, by ensuring that Canadians have a new, up-to-date electoral map as soon as possible, rather than having —

Senator Lynch-Staunton: Careful, now; we have second thoughts in our party, too.

Senator Smith: That is fair.

— a map that is based on data from 1991. The process happens every 10 years, every time we have a decennial census. It is pretty simple that the electoral ridings are updated in a way that reflects the changing face of Canada. This bill really delivers on that promise, and that is all that it does, and that is why I am pleased to sponsor this bill and encourage my honourable colleagues to give their support to this bill.

Some honourable senators may ask why this bill is necessary. As I said, there are only three clauses. It is not complicated. Its objective is to ensure that the new electoral boundaries contained in the 2003 representation order are not delayed any longer than necessary. I believe that is desirable and reasonable, because we want to ensure that a new electoral map is in place as soon as possible, and that will, in turn, increase the likelihood that the next election, whenever it is called, can proceed on the basis of electoral boundaries that accurately reflect current census data.

I am sure honourable senators are aware that the electoral boundary commissions for each province recently completed their work and, based on the result of the 2001 census, they have devised new electoral maps that reflect population growth and movements within and between provinces. The new ridings are contained in the 2003 representation order that was proclaimed on August 25. I will repeat that it was proclaimed on August 25. However, the new electoral map is not yet in force because of an automatic, one-year “grace period,” which is provided for in the Electoral Boundaries Readjustment Act.

In other words, the grace period delays the coming into force of new electoral boundaries for one year following proclamation. Therefore if it were August 25 of this past summer, that would mean it would not come into effect until August 25 of 2004. This one-year grace period is intended to give the Chief Electoral Officer and political participants time to prepare for and adjust to the new boundaries. As I mentioned, without this bill any federal election called prior to August 25, 2004, would have to be held on the existing, outdated riding boundaries based on population figures from the 1991 census.

Honourable senators, if that occurs, British Columbia, Alberta and Ontario would be deprived of the additional seats they are entitled to under redistribution — two new seats for each of B.C. and Alberta, and three additional seats for Ontario — as a result of population growth. Also, Canadians in all provinces would be denied their right to updated electoral boundaries to reflect changing population patterns within the province and ensure greater voter parity between ridings.

Bill C-49 would avoid this result by accelerating — and that is all it does — the coming into force of the new electoral boundaries. This bill does that by shortening the one-year grace period so that the new boundaries would take effect on the first dissolution of Parliament that occurs on or after April 1, 2004. Therefore it is an acceleration of approximately five months.

[The Hon. the Speaker]

Honourable senators, our Constitution mandates regular redistribution to ensure that our electoral system remains faithful to the principle of representation by population and other fundamental democratic principles. While the Constitution fixes the number of seats in this chamber, it requires that the size of the other place increases from time to time to reflect population growth. It is important to remember that the other place is affected in a direct way by this bill, whereas this place is not directly affected.

Senator Lynch-Staunton: You do not vote?

Senator Smith: They passed this bill with the support of the Official Opposition.

Senator Lynch-Staunton: So what?

Senator Smith: That may not mean anything to some honourable senators, but I wish to point that out to whomever finds it intriguing.

Based on the 2001 census figures, the number of seats in the House will rise from 301 to 308 MPs, and these new seats will go to the fastest-growing provinces, which are Alberta, B.C. and Ontario. In addition to these added seats, other adjustments must be made to boundaries with provinces to accommodate population shifts and other demographic changes.

There was an interesting article on the editorial page of *The Globe and Mail* today, written by John Ibbotson, in which he talked about how urban areas and cities are adversely prejudiced in regard to the average population of their ridings. Of course, if this bill goes through, I believe that will have some positive effect in the right direction, and so all of these changes, quite apart from a provincial basis, are essential to ensuring more electoral fairness and effective representation of local communities, given that the updated boundaries are, in fact, ready. They are now ready. There is no reason to delay bringing them into force any later than is strictly necessary for operational reasons.

In that regard, Bill C-49 takes its cue, and indeed its inspiration, from the advice provided to Parliament by the Chief Electoral Officer. What did he say? This last July, the CEO wrote to the Chair of the Committee on Procedure and House Affairs, outlining the feasibility of accelerating the implementation of the new electoral boundaries. Mr. Kingsley indicated that the full one-year grace period would not be necessary this time, and that it would be possible to meet an earlier date of April 1, 2004, provided the government introduced legislation to override the normal grace period which is automatically provided for in the existing legislation.

In his testimony before the House committee, the CEO reiterated that Elections Canada would be ready to implement the new electoral boundaries for any election called on or after

April 1, 2004. In these circumstances, not only does it make sense to accelerate the implementation of the new boundaries but also I believe electoral fairness demands it.

Some may ask how it is possible to accelerate the redistribution process in this way. We must remember that there have been great leaps in technology. It has been 40 years since the Electoral Boundaries Readjustment Act was first implemented. At that time, a full year may well have been necessary to complete the necessary tasks. Now, with modern technology and computerized election systems having greatly facilitated the work involved, there is less need for an extended period of adjustment.

To take an example, one of the main tasks after readjustment is preparing new electoral maps. Most of us can imagine how much easier that is today with the computer technology that exists compared to what existed in 1964, which was virtually nothing.

For these reasons, the CEO has made it clear that he will be able to implement the new electoral map as of April 1, 2004, and delay beyond that point is unnecessary. In that context, it is pointless to maintain these outdated electoral boundaries. They do not really provide an adequate basis for effective parliamentary representation and all the shifts in population that have occurred. Like our colleagues in the other place, we need to heed the advice of the CEO and, I believe, act quickly.

In terms of criticisms, there have been a few criticisms about this bill. First, I would note that no one has seriously argued that the April 1, 2004, implementation date is administratively or operationally unworkable. That is the justification for the grace period in the first place.

• (2030)

When an operational concern was identified at the committee, albeit one unrelated to the acceleration, per se, the government agreed to the amendments that represent the second and third clauses that would address the perceived problem.

In regard to other objections, some have suggested that this bill is intended to set the stage for the next election. Honourable senators, those who have made this accusation are putting the cart before the horse. The next election will be held at a time of the Prime Minister's choosing. This bill simply addresses the increasing likelihood that when an election comes, it will be based on the new boundaries rather than on the outdated boundaries.

Senator Lynch-Staunton: It is a good thing you are not in court.

Senator Smith: Honourable senators, I certainly would defend this proposition in court. We all know the reality that the transition is under way. That is not unusual.

Senator Lynch-Staunton: We have one, too.

Senator Smith: I am aware that honourable senators on the other side are undergoing a similar process. This is not unusual when there is a new prime minister of a party that is already in power. This happened when Mr. Pearson turned things over to Mr. Trudeau. He wanted a mandate quickly, and he went out and got one.

Senator Lynch-Staunton: He did not change the election law.

Senator Smith: When Mr. Trudeau handed things over to Mr. Turner, Mr. Turner wanted a mandate quite quickly. When Kim Campbell succeeded Brian Mulroney, she sought a new mandate fairly quickly. This is a normal pattern. For some people to see conspiracies here that do not exist is really rather short-sighted.

Some people have suggested that somehow this bill interferes with the independence of the electoral redistribution process, and it does not. Independence from political interference is the hallmark of our system. The process has unfolded entirely as it should.

Each province has a commission made up of three people. A judge who is appointed by the Chief Justice of that particular province always chairs that commission. In Ontario, for example, the judge who chaired the panel was certainly not noted for wearing red ties before he went to the bench, and that is fine.

Senator Lynch-Staunton: What is your point?

Senator Smith: It was done without any consideration whatsoever of political ramifications.

Senator Lynch-Staunton: No one challenges that; they did a good job.

Senator Smith: There were some challenges. There were some submissions made. Fine-tuning did occur. At the end of the day, the right result occurred. These commissions were additional to the one appointed by the Chief Justice, and the two appointed by the Speaker.

These independent commissions have completed their work. Members of the public and MPs have had the opportunity to be heard and the new boundaries have been drawn up and proclaimed exactly according to law. The only thing that remains to bring them into force, as soon as operationally possible, is for Bill C-49 to come into place, because the proposed legislation will simply accelerate when these changes can happen.

Some may say: "Why does this bill deal only with the 2003 representation order rather than shorten the one-year period for time in eternity?" It should be noted that the Government Leader in the House of Commons referred the need for a more permanent solution to the House Procedure Committee for further study. He also invited the committee to consider other possible changes to

the Electoral Boundaries Readjustment Act. As well, the Chief Electoral Officer indicated to the committee that he would be making his own recommendations for changes to the present system.

Bill C-49 is not the last word; it is, rather, a necessary interim measure to ensure that our electoral blueprints are up to date and reflect our ever-changing population. Honourable senators, this bill gives us the opportunity to deliver the promise of effective representation to all Canadians based on the most recent census. That is very reasonable.

An essential condition of effective representation is an up-to-date electoral map that reflects population size, movements and shifts as well as the diversity of our communities. Bill C-49 would ensure that the new electoral boundaries reflecting Canada's changing face come into force as soon as operationally possible. The Chief Electoral Officer determined the date.

Not to act on this important matter would be pointless. Quite frankly, why should we put ourselves in a straitjacket that is totally unnecessary? The bottom line is, I do not believe that this occurrence will adversely prejudice anyone. Whereas, if it does not occur, certainly those three provinces that will gain seats will definitely feel they have been adversely prejudiced.

I trust that all my honourable colleagues will follow the gist of what I have been talking about and pass this proposed legislation quickly.

Hon. David Tkachuk: I have a question for the honourable senator. Would the honourable senator indicate whether Bill C-49 will make the grace period permanent?

Senator Smith: I thank the honourable senator for his question. In response, no, Bill C-49 applies just to the current situation. The Chief Electoral Officer, when he appeared before the committee, said that he would be coming in with something. It is difficult to predict what he might say. The *raison d'être* for being able to accelerate the period is simply all the computer technology and map-changing ability that technology has given us. Indications certainly were that he could very well be making that change, but I would not want to speak for him. He opened the door to that potentiality.

Senator Tkachuk: Why would the Chief Electoral Officer write a letter to the government to suggest a change in the grace period and not have that change made permanent? I could understand him doing it if he said, "Well, we have all this new technology," as the honourable senator so well stated in his speech, "Maps do not take as long to make, we can do this quicker, and I would recommend that we amend the act to have the grace period set as seven, six or five months," and it would be a permanent amendment, rather than the one-year grace period which would make some sense. Why would he write a letter just to say, "I will be ready early, if you do this"?

Senator Smith: Honourable senators, I cannot speak for the Chief Electoral Officer. However, it was not the government that he wrote to; it was the House committee. He wrote to the committee, not because he was asked to by the government but rather because he was aware that this was an issue under discussion. This matter was in the public arena. It is a fairly normal thing when there is a leadership change within the same party for a new leader, particularly when the government is in the fourth calendar year, to want to seek a mandate.

Should there be a straitjacket whereby an election could not be called because they have to wait an extra five months for ridings to come into effect, legally, where everything is done other than this one clause in the bill? To the best of my knowledge, it was on his own initiative that he advised them that, technically, this could be done.

Senator Tkachuk: If the Chief Electoral Officer agreed with this change, and the government, the Commons committee and the Official Opposition agreed, too, then perhaps honourable senators could amend this proposed legislation to make that seven-month period permanent.

I am sure the honourable senator would support such an amendment, because it does not make sense for us to pass a bill for this time only. Why would we not amend the bill to make the grace period seven months rather than one year, and then send it back to the House for their ratification?

Senator Smith: The honourable senator may make whatever amendments he wishes.

Senator Tkachuk: I will.

Senator Smith: That is his option. The Chief Electoral Officer did indicate that he would study as to whether or not this made sense, and whether it was something that he would recommend on a permanent basis.

I cannot speak for the Chief Electoral Officer. Actions speak louder than words, and he did write this letter to the committee. That makes the case for itself.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I would like to ask Senator Smith if he is suggesting that this change is as a result of the Chief Electoral Officer's following the changes in the Liberal Party and, once he noted that there would be a change in leadership, he felt that it was his duty to advise the House committee that what has been called the grace period could be delayed or could be shortened in order to accommodate the new leader's electoral preferences?

Senator Smith: The letter in question is a matter of public record; it is dated July 15, 2003. It is written to Peter Adams,

Chair of the Standing Committee on Procedure and House Affairs. The first sentence reads as follows:

Dear Mr. Adams: I am writing to you in light of recent media articles concerning the possibility of accelerating the implementation of the new electoral boundaries, effective April 1, 2004.

The gist of the letter over two pages is it can be done.

• (2040)

Senator Lynch-Staunton: I find it extraordinary that the Chief Electoral Officer, who should be the one officer above politics, would volunteer to interject himself in the machinations of any political party, in particular the governing one, but we will have occasion to question him on that one when he comes before the committee.

I will ask another question. Had the Chief Electoral Officer not noticed in media reports that certain things were going on, would this bill be before us?

Senator Smith: That is a hypothetical question.

Senator Lynch-Staunton: No, it is not. It is a practical question.

Senator Smith: It is a hypothetical question, and I do not really have a crystal ball with which to answer it.

Senator Lynch-Staunton: It is a very practical question because the Lortie commission, which sat and came out with a very valuable report with recommendations on how make improvements — with Madam Pépin as a signing member — recommended at the time to shorten the grace period to six months. The Chief Electoral Officer, at least 10 years ago, said that the one-year period could be reduced. Senator Tkachuk's question is well-founded: Why is the amendment to reduce it only for this particular proclamation, if it was good enough for the Chief Electoral Officer some 10 years ago? There have been three bills on elections presented here, Bill C-18, Bill C-63 and another one which I have forgotten, but not one has touched on this particular item called the "one-year delay," what the honourable senator called the grace period.

Not only is it extraordinary that it only applies to the next election, when all experts have said it can be done for all elections for the future, it also arises from the needs of the next leader of the Liberal Party, or to give the discretion to call an election earlier than it would be called under the new boundaries.

I am just trying to have the honourable senator deny that the Chief Electoral Officer has been influenced to come out with this amendment or to support this amendment, because that challenges his neutrality.

Senator Smith: I understand the question. I fully expect that the Chief Electoral Officer would be called as a witness, and that question can be put to him at that time. I am not aware that he was influenced to do this. The last paragraph of his letter was:

I trust that the Committee finds this information useful and I would appreciate being kept abreast of any development concerning this matter, so that I may start preparations, if so required.

He was aware that this was a matter of debate within the public arena. Therefore, he says, "Well, if you want to do it, it can be done." I actually find it quite inspiring that he would take the initiative to do that rather than be shocked.

Senator Lynch-Staunton: There have been many representations in the press recently about the effectiveness of the registration system we now have that replaced the enumeration system, and I have not seen the Chief Electoral Officer respond to that. Suddenly, he quickly responds to certain media reports that there is a change in leadership, and, therefore, he, as I hear, volunteered a contribution to an accelerated process. I do not understand his role in all of this. Did anyone ask him, or did he, himself, write that letter without any incentive except wanting to do good for — I will not add anything.

Senator Smith: That may be a rhetorical question to some extent.

Senator Lynch-Staunton: It is not. It is a practical question.

Senator Smith: I know it is a practical and fair question, but I cannot answer it. Let us go back to what he said in the first sentence:

I am writing to you in light of recent media articles concerning the possibility of accelerating the implementation of the new electoral boundaries...

He is an astute student of history. I was here in 1968 working on the Hill; Mr. Trudeau wanted a mandate. I was here in 1984; Mr. Turner wanted a mandate. I was not here in 1993 when Ms. Campbell decided she wanted a mandate, but the same dynamic occurred each and every time. I am a reasonably astute observer of what occurs in that dynamic. Someone comes in seeking a new mandate. Rather than have these three provinces be adversely prejudiced with their representation locked into a 1991 census, the Chief Electoral Officer says, "If you want to do it, it can be done." You can ask him these questions — they are all valid — when he appears before the committee.

Senator Lynch-Staunton: I have been around with Mr. Diefenbaker, Mr. Clark and Ms. Campbell. I do not recall any of them being given favourable consideration by a chief electoral officer.

Some Hon. Senators: Hear, hear!

Hon. Marcel Prud'homme: I must say that I very much admire the coolness of my long-time friend, Senator Smith, to discharge himself of a very difficult situation. That is bad English, but I want to practise my English tonight, at no cost to Canadian taxpayers.

The honourable senator mentioned 1984. Of course, at that time, there was already a census in 1981 and a new map, but it was not ready. We did not ask permission. I ran in 1988 on the 1981 map; I ran in 1968 on the 1961 census; I ran in 1979 on a new map based on a 1971 census. As the honourable senator very well said, we will see what happens when we come to the committee with a very good civil servant. Dome will find him an accommodating civil servant. He is a good friend. He has a job to do, but so do we.

I want to ask the honourable senator if the true meaning of this is not to allow the one that is perceived to be the next leader of the Liberal Party — and, by the way, I congratulate you for having delivered Ontario three times in a row for Jean Chrétien, who is my old friend for 50 years almost today. It is almost 50 years that Jean Chrétien and I met in the Young Liberals in September/October 1953. The honourable senator is dispatching his job very well.

You know my reputation in many quarters is unbelievable. I hear it, and sometimes I help to propagate it so as to listen to how it will come back. I usually say that my reputation is that I talk a lot, but there is always someone to come to my rescue and say, "Oh, he talks a lot, but he delivers. When he makes a promise, he delivers."

The honourable senator is like that in other ways; he delivers. Is it not to avoid an embarrassment for the next Prime Minister of Canada, whose father I happened to be a friend of and himself a fine gentleman? Is it not truly to be accommodating, so that the sooner he could win the election, the better he could control his mob of people who will have to wait until after August 22 if we were to follow the usual practice? Is that not real cool politics, or is the honourable senator ready to say that we should be so accommodating?

You are a Trudeau boy. So was I; I was a Pearson boy. Why do we change suddenly overnight only for one election? It would have less restriction if it were an amendment for the future because I agree with you.

• (2050)

We have modernized the institution. I agree with Mr. Kingsley. With computers, you can do more. As a matter of fact, I do not see why we should wait nine months. I think we should do it in six. Yet, it must be wrong because there is another bill tonight.

Honourable senators, 37 members of the House of Commons want to change the names of their districts. This bill is not even passed and there is another law to ask that the names of their districts to be changed — 37 of them! In Quebec, they are all Bloc requests. I am not ready to accommodate anyone. I think this is a mistake.

Honestly, does the honourable senator not think he is doing a marvellous job but dispatching a very difficult cause?

Senator Smith: I am not quite so cynical. That was a long question. Perhaps I can recall the sequence of points made by the honourable senator.

First, the precedents to which I referred were not as to how long a period of time it was between the last census and when the election was called where the boundary was changing but as to the pattern that always occurred. When you have the same government in office, the same party, and you have a new leader, the pattern is that they like to go as quickly as possible to get a mandate. That happened in 1968.

Senator Lynch-Staunton: So we change the law to accommodate them?

Senator Smith: That happened in 1968, 1984 and 1990.

Senator Lynch-Staunton: It did not change the law.

Senator Smith: I do not find anything weird about that at all. I find it actually desirable that when you have a new leader, that leader is able —

Senator Lynch-Staunton: You change the law to accommodate him!

Senator Smith: — to call and get a mandate that they stay or go. In the case of Mr. Turner, you saw the mandate. I happened to be one of his ministers at the time.

Senator Lynch-Staunton: He should have extended the proclamation order then.

Senator Smith: I went back to Toronto to practise law as a result of that, an involuntary retirement. I do not see anything undesirable about getting out of the straitjacket.

The honourable senator asked if it would bother me if we were making it permanent. No, it would not, but that is not the bill that passed the Commons. This bill does not directly affect us in the way that it affects them. It did go through with the support of the official opposition, and I do not think that is totally irrelevant.

Senator Prud'homme: The spirit of these laws was to take away from the members of the House of Commons — and I was one for 30 years, as was the honourable senator — the tampering by the elected people because they had a vested interest.

What I tell them is devastating — and I tell each and every one of them — but they should not even touch the electoral districts. That should be left to the Senate alone because we have no vested interest. It should be left to us and not to them. Look at this law

that we are being asked to vote on tonight. They want to change the boundaries because they have a vested interest. When I hear these members say, "They touched my district," I run to them and say, "Do not say that. It looks bad. Say the district that I have the honour to represent." They say, "They dare change the boundaries of my district," as if it were a personal possession. This is wrong. That is what we are trying to do — you and I and the young Liberals — namely, to take away the tampering that I saw happening in the 1950s, where members would go into the office, have a drink, and say, "Give me these parishes; I will give you these streets." You were a very dynamic reformer. I know that in your heart, you are still a reformer. It should not be left to the House of Commons to tamper with the Electoral Boundaries Act.

Senator Smith: I thank the honourable senator for that remark. I believe I still am a reformer. It is true that the word was and still is "gerrymandering." I think the system that we have in place avoids that. I believe it is done objectively and dispassionately without political influence. I think it is the hallmark of our legislation. I am very proud about it, especially when one reads the stories about what has gone on with the congressional seats in Texas, where they literally flew to Oklahoma. They are proud of how they will deny the Democrats a half dozen congressional seats by fiddling with the boundaries. We do not have that. We have here a bill that will simply accelerate the period to get out of the straitjacket. It will give these three provinces with over half the population of Canada between them the new seats that the population entitles them to rather than leave them in the straitjacket of the 1991 census. I think that is a desirable thing to do.

Senator Lynch-Staunton: They are there. They already have them.

Could I ask a supplementary question of the Honourable Senator Smith?

Senator Smith: Yes.

Senator Lynch-Staunton: Does the honourable senator agree with the following statement, which comes out of *The Globe and Mail* of July 4:

Liberal leadership front-runner Paul Martin is planning to tell Elections Canada to speed up its redistribution of House of Commons seats to facilitate a possible spring election, sources said yesterday.

Is that accurate?

Senator Smith: I do not really know. I have absolutely no idea. I am not here as an apologist for anyone. I know exactly what this Chief Electoral Officer said in his letter to the parliamentary committee. To me, it was perfectly logical and I think represents good and desirable public policy.

Senator Lynch-Staunton: In the case of Mr. Turner, who was heading for defeat, which the honourable senator mentioned, did the Chief Electoral Officer not offer, after reading media reports, to extend the proclamation period by a couple of years?

Senator Smith: I have always wondered about that election call myself because I had a seat then. I was not feeling too good about getting re-elected. It was nothing personal toward me, but just as a rising tide lifts all boats, an ebbing tide lowers all boats. The tide was going out, but I would not have minded a little more time in office. However, in the long run, I have no regrets about it because I went back to work and made it possible for me to finally afford to come here.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): I wonder whether the honourable senator will provide a little more explication for what I understood to be a principle that he was arguing, namely, that this bill affects the people in the other place in a direct way; it really does not affect members of this place.

I am curious about that principle. Surely, the honourable senator is not suggesting that legislation should be assessed by legislators in terms of self-interest. Surely, the honourable senator would want to build any statute that speaks to elections upon the right to vote and the right to participate in government, which are fundamental values of the country, rather than what I understood him to have said; that is, that this bill does not affect this house but it does affect the people in the other place. Would the honourable senator care to explain and elaborate on that principle?

Senator Smith: Honourable senators, I am not suggesting for one second that we should not have jurisdiction and have to pass a bill such as this, even though it does not directly affect us in the same way as it affects them. It creates seven new seats in the House of Commons.

Senator Lynch-Staunton: No, it does not. They are already confirmed. The seats are there.

Senator Smith: It will implement them at a point five months sooner than they otherwise would if they have to wait for the full one-year grace period, which was put in legislation that was passed 40 years ago when they did not have the technical tools to do these things faster. Rather than sitting around moaning and groaning about that, I think it is refreshing that you have an official in this position saying, "If you want to do it sooner, it is technically possible. You decide." He was not saying, "I will decide." He was saying, "You decide. You have that option." They decided, and I do not think it is irrelevant. I know I keep harping about this, but the bill was passed by the House of Commons. An amendment was put — clauses 2 and 3 — by the Official Opposition, accepted by the government, and when the bill received third reading, both the government and the official opposition supported it.

• (2100)

Senator Kinsella: The position of the honourable senator would then be that the assessment of legislation, whether in this place or in the other place, must be guided by the best assessment of what constitutes the public interest, not what constitutes the interest of the members of the other place or of this place.

Senator Smith: I think that is true of all pieces of legislation. I fail to see how it is in the public interest for us go into an election on 1991 boundaries that would deny three provinces the seats that they are entitled to because of these population changes when it is totally unnecessary, and the person who brings it to our attention is the Chief Electoral Officer. What do we want to do? Put on blinders, close our ears and be in denial that it is possible for us to solve this issue? I applaud them for taking that initiative, and I applaud the house for solving it.

Some Hon. Senators: Hear, hear!

Senator Lynch-Staunton: I remind Senator Smith that, in 1995, the House of Commons passed a bill, which was rejected here after long debate, to not allow the redistribution based on the 1991 census to be used for the 1997 election. The government introduced Bill C-18, and then another bill, and in June 1995, it was defeated in this house. The 1997 election, which was called in June, was based on the 1991 census figures and not the one in 1981, which the government wanted at the time. Why? Because in that 1993 election, you had a lot of new members who were elected for the first time. When they saw the new maps, many of them panicked, because either the ridings were to be altered drastically or in some cases were disappearing into new ridings. They turned to the leaders in the caucuses and said, "Look, we worked hard for this for years, and we finally got it. How dare you change."

The mapmaker said it had to be done, for the same arguments the honourable senator is giving: Population shifts and changes and new ridings being added to Ontario, Alberta and B.C., I think. The government of the time, yielding to the pressures of its own caucus, introduced a bill to allow, had it been passed, the 1997 election to be based on 1981 census figures. It was this Senate, and this side of the house, that was able to defeat that bill.

Now we have the absolute opposite. Now we are being told that we have to accelerate the process, for the same reason. The caucus is saying we will have a new leader, and as the honourable senator said very openly, it is advantageous for a new leader, once elected, to take advantage of the momentum that the leadership creates to call an election as soon as possible. That is the only reason the government is doing this. If the government were serious that the grace period, as they call it, can be delayed six months, it would present us with an amendment to make it permanent — to tell us the six-month period is cast in stone, or so much so that it needs an amendment, which means that when the next election comes around, we may or may not be back to a one-year grace period. There may be at that time another change in leadership, and they will say, "Maybe we can do it in three months."

Think of the other political parties. I do not want to give my speech at this time. I have thoughts on this issue that I will share with the house either tomorrow or the day after, at the latest. Think of the other political parties and how they will be affected by these changes. Think of the political parties, including your own, which have great difficulty right now in abiding by the difficult provisions of the new Election Financing Act and all the paperwork it requires and all the people who have to be found to serve in certain offices that never existed before. Think of two parties that are talking about getting together, and who, by the schedule suggested, would not have a new leader until March. How can they abide by this agenda? You must think of the whole process.

You cannot have changes to an election act to serve strictly one political party. It has never been done before. You tried it in 1995, and thank God you failed. It did not stop you from winning the election in 1991. Old boundaries, new boundaries, you won it. Now you are saying that you want to change this because the tradition is that the leader, as soon as elected, has an advantage to call an election. I agree with that. Well, let him call the election on the existing boundaries. Why not?

I will stop after one more point, because I know we have been going on too long. I made mention of this so-called opposition briefing book on Bill C-49. Never have I seen a document called "Opposition Briefing Book." Briefing books are meant for all senators, in particular those who sit on the committee responsible for assessing the bill. I mentioned the one on Bill C-17, which is complete and which analyzes every aspect of the bill. As far as I have seen so far, it is as informative as any briefing book I have ever had, and it is a terribly complicated bill, as we all agree.

This one is not as complicated. This so-called "Opposition Briefing Book" does not even have the final version of the bill. It has two press releases in one language only. I reject this document.

I would hope that, before we go to committee hearings on the bill, Senator Smith will see that we have a proper briefing book that analyzes the bill clause by clause and explains those two clauses. The honourable senator has concentrated mainly on the grace period, but there are also two other clauses in that bill. It does not matter whether we deal with them now or later before the committee, but they should be dealt with in a proper briefing book available to all senators, not this pathetic, unilingual, useless, uninformative paper which I completely reject.

Senator Smith: I am not the author of that paper, but the honourable senator makes a point, and I will certainly make inquiries. It was a valid point. I was looking at our deputy house leader, who was nodding at your suggestion that you wanted one in a proper format. I agree with that.

I was asked "Why not call an election on the old boundaries?" I think that is particularly prejudicing the people in three provinces when it is entirely unnecessary. The honourable senator talked about political expediency. I am not defending what occurred back in 1995, but the last time I looked, four of the seven seats are in Alberta and B.C. The last time I looked at those results, we did not fare that well out there. On the law of averages, most of them will not be Liberals. Am I saying we should not do it? No, I am saying we should do it, because it represents good public policy.

Some Hon. Senators: Hear, hear!

The Hon. the Speaker: I regret to advise that Senator Smith's 45 minutes have expired.

On motion of Senator Lynch-Staunton, debate adjourned.

AMENDMENTS AND CORRECTIONS BILL, 2003

POINT OF ORDER

Hon. Anne C. Cools: Your Honour, this is not really a point of order. It is more in the nature of a correction that I would like to draw to Your Honour's attention. I was looking at the *Debates* and I discovered a mistake, so I guess it is a point of order, in a way. We are on Bill C-41. Your Honour, I was looking at the *Debates* of Thursday, October 23, and I was reading Your Honour's ruling. I noticed that Your Honour mentioned me. If I could, I would like to read what it says. October 23, *Debates of the Senate*, page 2219, it says:

• (2110)

Senator Cools also participated in the discussion on this point of order. The senator raised several issues in her intervention. First, Senator Cools expressed her understanding of the nature of these omnibus amendment bills, suggesting that they did not indeed have to possess a common theme.

Honourable senators, that is not what I said. Therefore, of course, since I believe very strongly that omnibus amendment bills must have a common theme to tie the amendments together, I was a little bit puzzled about what it is that I possibly could have said that His Honour would have drawn the opposite conclusion to what I actually said. This is important because those thoughts may have been extremely critical to His Honour's ruling, so I thought I should bring it to the attention of the chamber.

What I did, honourable senators, is I went to the debates of the day before and I looked at what I had to say. I went to the debates of October 22, 2003, at page 2205, and I looked to where my name was and I found what I said, and I would like to read that direct quote so there is no misunderstanding.

Honourable senators, I have just a few minor points. My understanding is that omnibus bills are in order, and that their purpose may be to amend many statutes. However, there must be a common theme running through the amendments to tie them together in a bill. A long time ago during the debate on free trade I remember that Herb Gray, in the other place, made a definitive statement about the need for proposed amendments in omnibus bills to have a consistent theme that ties them together. In other words, the bill has to be intelligible to members of Parliament.

Therefore it was clear, honourable senators, that what I was saying and what I actually said, in accordance with the quote that I just read, was that omnibus bills must clearly possess a common theme. I do not know how His Honour heard the opposite of what I said, or how it is that His Honour was able to make a mistake like that, but I thought I should call it to the attention of His Honour. He may want to correct that at some point, but it does sound as though, somehow or the other, I was saying something that I did not say and that I certainly do not believe. I just wanted to clarify that for the record. I hope that what His Honour thought I said was not the foundation of his entire ruling, because if it were the foundation of the ruling it would mean that he would have to reverse himself. Perhaps His Honour should look at that.

The Hon. the Speaker: Thank you, Senator Cools. I appreciate you drawing this to our attention. Rather than trying to respond, I should look at what you have suggested I look at and perhaps we can remedy the language in the ruling, and I will do that.

THE ESTIMATES, 2003-04

REPORT OF NATIONAL FINANCE COMMITTEE ON SUPPLEMENTARY ESTIMATES (A)— DEBATE ADJOURNED

The Senate proceeded to consideration of the ninth report of the Standing Senate Committee on National Finance (Supplementary Estimates (A) 2003-2004), presented in the Senate on October 22, 2003.

Hon. Joseph A. Day moved the adoption of the report.

He said: Honourable senators, I will say a few words with respect to the report. If honourable senators wish to follow along they will have on their desks the Supplementary Estimates (A) for 2003-2004, and the ninth report of our Standing Senate Committee on National Finance, which report was also attached to the *Journals of the Senate* in its entirety on October 23.

Honourable senators, as deputy chairman, I am presenting this report on behalf of the Standing Senate Committee on National Finance in his absence of our chair, Senator Lowell Murray.

Permit me, first, to compliment and thank our chair, Senator Murray, for a fine job in his leadership with respect to our National Finance Committee, and in particular with respect to the work done in relation to the Supplementary Estimates (A), which forms the subject of this report.

The 2003-2004 Supplementary Estimates (A) outline proposed expenditures of the government for which approval will be sought in a supply bill. I understand that the supply bill will be presented in the House of Commons tomorrow and dealt with there, and then it will proceed here.

As honourable senators will recall, with respect to supply we treat matters a little bit differently, and the report that our committee is asking to you consider forms the basis for the supply bill when it is presented. We do not go to committee with respect to the supply bill, unlike other matters. We use this report and the work that we have already done with respect to Supplementary Estimates (A). That is based on the assumption, subject to verification, that Supplementary Estimates (A) are reflected in the supply bill when it does come to us. We, as a committee, will of course verify that for you.

Our committee held meetings on September 30, 2003, and October 7, 2003, in order to review the Supplementary Estimates (A). From Treasury Board Secretariat we had new witnesses this time. Mr. Mike Joyce and Mr. Marc Monette appeared on behalf of Treasury Board. At this time, on behalf of your committee, I would like to thank Mr. Rick Neville, who has moved on to the Royal Canadian Mint as the Chief Financial Officer, and therefore is no longer with Treasury Board Secretariat. He was for many years the witness who appeared before our Standing Senate Committee on National Finance and has done a very fine job. We had a good rapport with him, and there was a lot of trust between us. I congratulate him on his new position and wish him well in that regard.

Honourable senators, permit me first to tell you about two general areas where we had concerns as a committee. The first area is with respect to transparency and clarity of what is presented to us in the Supplementary Estimates. This is not a new issue but we keep bringing it up and there are attempts each time for Treasury Board to provide us with more precise and clear detail, but it still does not satisfy your committee. We have an undertaking from Treasury Board Secretariat that they will try to improve on that area.

What happens now, honourable senators, is that we have to ask the officials to look up the explanations for various expenditures in their book. We have asked them to give us the book so that we can look up the explanations so that we can ask more meaningful questions when the officials appear before the committee. We are hopeful and confident that we will continue to improve on that matter.

The other area is the difficulty that honourable senators have in going through the Supplementary Estimates when expenditures for a particular item are spread over different departments. They refer to that as a horizontal or multiple-department expenditure.

We did, for the first time, receive from Treasury Board a number of explanations where they went to various departments and brought it all together to explain the overall expenditure. We would like to see more of that kind of work so we may understand the full expenditures on any given item.

• (2120)

The Supplementary Estimates, honourable senators, indicate that there is a \$5.7 billion increase over what has already been before Parliament. Of that \$5.7 billion, \$5.5 billion is listed as votable and \$0.2 billion is unexpended funds that were approved in previous years. We approve that they be brought forward to this particular year, if we decide that that is what we would like to do.

With respect to horizontal items affecting more than one department or organization, I can give honourable senators an example that was work that was done by Treasury Board on our behalf: \$233.7 million to strengthen research and innovation in Canada as announced in the budget. Of that, Industry Canada received \$105.3 million; the Canadian Institute for Health Research, \$56.5 million; the Natural Sciences and Engineering Research Council, \$48.3 million; and the Social Sciences and Humanities Research Council, \$23.6 million. When we bring those departments together, the total expenditure is \$233.7 million. That is an example of a horizontal expenditure brought together for us.

Another example is \$150 million for program implementation relating to climate change that Honourable Senator Oliver will be interested in. Natural Resources Canada is to receive \$126.5 million and Environment Canada \$23.5 million, for a total expenditure of \$150 million. A number of other major horizontal expenditures are outlined in our report. I would encourage honourable senators to look at that report.

In relation to major expenditures by a department, I can go through a few of those that may be of assistance to give honourable senators a flavour for what is in the Supplementary Estimates. There is an expenditure of \$1.288 billion for the Department of National Defence to sustain Canada's military and to maintain existing defence capabilities. An expenditure was announced in the 2003 Budget for incremental costs associated with the deployment of troops in Afghanistan. That figure is \$387.7 million to this time. Honourable senators will know that the soldiers are still there. We asked what the total amount was and will be with respect to Afghanistan. They were unable to give us that figure. That is understandable, because the deployment continues, and there may well be other expenditures as times goes on.

For the Canadian Forces non-commissioned members and general service officers, as well as medical and dental officers, to maintain pay comparability, salary increases for doctors and other specialty services within the Armed Forces, we see an expenditure of \$107.6 million in this fiscal year.

With respect to Agriculture and Agri-Food Canada, to help implement the Agricultural Policy Framework, which is a new government initiative, there is an expenditure of \$354 million, total. Of that, food safety and food quality, science and innovation, \$294.3 million; and loan guarantees to producers, \$59.7 million.

Honourable senators, I could go through a number of other departments, but this information is laid out in our report for you to review. In addition to those items, honourable senators, members showed an interest in a number of other items contained in the Supplementary Estimates. I will take this opportunity to outline a few of those special items of concern.

For instance, senators noted that a substantial amount of funding in Supplementary Estimates (A) had been earmarked for Canadian health institutes of research. We wanted to know where these institutes of research were, because it is not clear in the Supplementary Estimates. It was explained to the committee that the Canadian Institutes of Health Research encompass 13 virtual institutes, and that a scientific director who is resident in an existing university or research hospital heads each of these virtual institutes. The host institution of each of these institutes receives a grant of \$1 million annually to support the operation of the institute. The 13 institutes cover research in a broad range of areas, including Aboriginal peoples' health, aging, cancer research, circulatory and respiratory health, gender and health, genetics, health services and policy research, human development, child and youth health, infection and immunity, musculoskeletal health and arthritis, neuroscience, mental health and addiction, nutrition, metabolism and diabetics, and population and public health. A wide range of subject matters is covered by these virtual institutes.

Another topic of discussion during the hearings that concerned the committee was with respect to funding for the Canadian Firearms Centre. Your committee was on top of this issue long before other committees in the other place were concerned about the Canadian firearm expenditures in previous reports, and before the Auditor General. Honourable senators will recall that we had to go into two different votes — I believe it was 1 and 7 — under Justice in order to find out where the firearms expenditures were in previous years. We asked that that be lifted out and put as a separate category so that we could see specifically what was involved. That was done at our urging.

Under the heading for the Firearms Centre, there was an expenditure of \$10 million, which was described as new appropriations under vote 7a. Upon questioning, it was determined that this \$10 million is not new money, but is rather a carry-forward from a previous year where the \$10 million was not used, and all the other funds are transfers from Justice to the Solicitor General. The information that we received is that there is no new money with respect to firearms. There was a delay in planned expenditure. That is the reason for the delay in using the \$10 million from the previous year, because of the delay in passing Bill C-10A. That bill did not proceed as quickly as anticipated.

Honourable senators, a third item of interest was the appropriation for the National Capital Commission. This raised a number of issues. There was an appropriation recommended of \$31 million for a capital expenditure. Upon questioning, it was determined that this request was for the purpose of acquiring the Scott Paper Limited lands that are adjacent to the Canadian Museum of Civilization, across the river from the Parliament buildings. This was considered by many to be a once-in-a-lifetime opportunity to consolidate federal ownership of property along the shoreline of the Ottawa River and on Confederation Boulevard on the other side of the river. As a result, the National Capital Commission announced on October 3, 2003, that it had signed an agreement with the owners, George Weston Limited, to buy the property for \$36.1 million. The amount will be made up of \$31.1 million sought in the Supplementary Estimates, and \$5 million in the current National Capital Commission budget. The current owner will continue to use the land for 25 years and will pay the National Capital Commission \$29 million in rent.

Honourable senators generally support the acquisition of this land by the National Capital Commission. However, some had concerns regarding the lack of transparency in regard to the announcement of the initiative. Moreover, the public announcement gave the impression that the transaction had been finalized before the National Capital Commission had come to Parliament to request the funds to acquire the land. Upon questioning, it was determined, that the National Capital Commission, with George Weston Limited, had only entered into an agreement to purchase, subject to approval by Parliament.

• (2130)

Nevertheless, it was the view of the committee that, in order to avoid future confusion, federal government departments and agencies should be careful with respect to public announcements that are contingent on obtaining the approval of Parliament for appropriations, or they should ensure that parliamentarians are fully informed of the status of the activities for which funding is sought.

Honourable senators, I have given you some of the highlights. We have a long report dealing with many different issues. I invite you to review the report. Your senators on the Standing Senate Committee on National Finance have been working diligently and doing some good work on your behalf.

[Senator Day]

I respectfully request that you support the motion to adopt this report.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): I wonder if the honourable senator could help us. As he would know, in all the published Estimates documents —

[Translation]

The Hon. the Speaker pro tempore: Honourable senator, I regret to inform you that your allotted time is up.

[English]

Are you asking leave to continue?

Senator Day: With the permission of the Senate, I would be agreeable to receive Honourable Senator Kinsella's question.

The Hon. the Speaker pro tempore: Is leave granted?

Hon. Senators: Agreed.

Senator Kinsella: The honourable senator will recall that — I think it is in the inside cover of all the published Estimates documents every year, as with this year — there is a paragraph, which states, Supplementary Estimates, and it reads as follows:

Supplementary Estimates directly support an Appropriations Act. Supplementary Estimates identify spending authorities...

Then this:

Supplementary Estimates are normally tabled twice a year, the first document in early November and a final document in early March.

I wonder whether the honourable senator has an explanation as to why there is this significant deviation from the annual practice of having the documents tabled in early November rather than what we have now. These documents were tabled in early September or October. How do you explain that it is not early November that we are getting this, which is normally the practice?

Senator Day: I thank the honourable senator for his question. I am reading from the same paragraph in the Blue Book on the Supplementary Estimates. The term is "normally." In this instance, "normally" does not mean always. It means "usually," and in this instance, they were filed a few weeks prior to that.

Senator Kinsella: Does the honourable senator have an explanation as to why this year is unusual?

Senator Lynch-Staunton: It is like Bill C-49. Everything is unusual this year!

Senator Day: No, I do not.

On motion of Senator Oliver, debate adjourned.

PERSONAL WATERCRAFT BILL

THIRD READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Banks, seconded by the Honourable Senator Spivak, for the third reading of Bill S-10, concerning personal watercraft in navigable waters.—(*Honourable Senator Moore*).

Hon. Wilfred P. Moore: Honourable senators, I rise this evening to speak to Bill S-10, concerning personal watercraft in navigable waters, which was introduced by our colleague Senator Spivak on October 31, 2002. Senator Spivak in preparing this bill has demonstrated again to the public that the members of this chamber are abreast of their concerns. I congratulate the honourable senator for her hard work on this bill over the past year.

As well, I would like to mention the Standing Senate Committee on Energy, the Environment and Natural Resources and its chair, Senator Banks, and to commend him and all committee members for their participation in this matter.

Honourable senators, this bill addresses a situation that has been at the root of the displeasure of many people who enjoy cottage life or day trips to the beach or the lakes. It is an ongoing problem that clearly requires appropriate legislation and, in my opinion, Bill S-10 effectively does this.

The makers of personal watercraft might view this bill as a slight to their industry and those who enjoy these craft. However, I say not so. This bill simply provides opportunity of protection of the rights of those who would prefer more tranquil use of our lakes and beaches.

A quick trip to Websites of manufacturers of personal watercraft demonstrates what these machines are all about. One encounters terms such as “full throttle” and “modern muscle,” with depictions of these craft travelling at great speeds and leaving the water completely. What we have here is the promotion of a culture that extols power, speed and acrobatic manoeuvres in a marine setting, most of which are not appropriate. These images, I think, tell much of the story, but not all.

I would like to address the environmental, navigational and safety concerns that surround these personal watercraft.

First, with regard to the environmental concerns, our neighbours to the south have been dealing with this problem for some time. This has resulted in many states taking action to limit the use of these craft. Bluewater Network, an American environmental group dedicated to protecting ecosystems in the United States of America, has many concerns about the use of these personal watercraft. They conducted a survey in 2002 which arrived at some very interesting conclusions.

As to pollution levels, the study demonstrated that the engines that power these craft operate at a higher average horsepower than other watercraft, such as motorboats or the “putt-putts,” which Senator Banks alluded to. Their throttle settings were found to be set higher, and these craft tend to be used more than their conventional motorboat cousins.

The point to be made here is that the smaller engines of personal watercraft combined with their frequency of use, as well as the manner in which they are used — that is to say, at full throttle most of the time — result in higher exhaust emissions.

The California Air Resources Board was created by the State of California to protect against air pollution and compiled its own statistics regarding personal watercraft and their effects on the environment. The Bluewater Network study quotes that board's statistics as follows:

...a seven hour ride on a personal watercraft produces the same amount of smog forming air pollution as over 100,000 miles driven in a 1998 passenger car.

That is a very disturbing statistic.

Furthermore, the impact of personal watercraft on wildlife has also been well documented. The design of these craft, with hulls of a very shallow draft and without a rudder, enable personal watercraft to travel in much more shallow and near-shore waters than other powered craft. This has an adverse effect on not only water plants but also the wildlife that inhabit these waters as well.

Second, I would like to address the problem which spurs most to become involved in this debate. The catch phrase today is termed “sound emissions,” which most of us refer to as noise. There is a simple reason as to why these craft are considered louder than other craft that frequent our lakes and oceans, and that is, once again, the design of their hulls and propulsion systems. These hulls are designed to leave the water completely, exposing their propulsion systems and thus leading to the reverberating magnification of their noise levels. That noise pollution is erratic, grating and obtrusive and is more annoying to the human ear than a steady or constant noise.

Third, the operators of these craft often operate them in a manner that is not consistent with the nautical rules of the road. On many occasions, I have personally observed them passing on the wrong side of navigational markers, closely crossing the bows of other craft and proceeding at speeds in excess of the posted and safe limits. These craft create large wakes without regard to other motor craft, sailboats and people on the water, or our infants who might be playing in shoreline waters. Again, the design of these craft enables and encourages these demonstrations of lesser seamanship. In addition to these unsafe activities, I am concerned about the poor examples of seamanship and boating etiquette being set by the operators and their watercraft in the eyes of our young boaters.

• (2140)

In closing, Bill S-10 puts in place a process that the Canadian Coast Guard advanced in 1994 to deal with the various problems surrounding these personal watercraft. These craft are clearly not the same as small boats on which people go fishing, cruising or visiting friends across the lake or bay. They are not the same in their design or in the manner in which people use them and, thus, they require specific regulation.

We must provide the leadership that is expected of us. Some provincial governments have taken action on this file. It must be remembered that lakes and oceans are a federal concern and we must not be bypassed on this matter. Bill S-10 addresses this issue while allowing communities to decide what is the best use of the lakes and oceanfront waters in their locale. I urge all honourable senators to support Bill S-10.

On motion of Senator Robichaud, for Senator Hervieux-Payette, debate adjourned.

[Translation]

BUSINESS OF THE SENATE

Hon. Marcel Prud'homme: Honourable senators, I have just the one question I would like to ask Minister Robichaud, as I always call him. I sat here until a bit past 11 p.m. last Thursday. We were to come back today for a vote that had been put off as long as possible, in order to adjourn and go and socialize with Senator Hubley. That is what I had understood last Thursday, but here we are doing otherwise. We sat until 6 p.m., then had the bells and returned at 8 p.m.

I pay great attention to the work of the Senate, and have been here since 2 p.m. It is now 9:45 p.m. It would be inelegant to list those who are absent, and it is not done, but I will say to my constituents — as I call the people I represent — that I have been sitting here since 2 p.m. and will not budge until Minister Robichaud tells us that we have gone far enough.

Do you not find, Mr. Minister, that that time has come? Before moving to the next item, just look around. You will end up having to get the big whips out to stir up a quorum. There is no problem with me, I will be here.

Could you not — since we have graciously given you part of what you were looking for — rise to speak and tell us that, if the Senate consents, you believe there would be agreement for all unaddressed items on the Orders of the Day to be stood?

[English]

If you were to propose that, I think you would find unanimity in the Senate. However, I want to reaffirm what I said. When we adjourned on Thursday night, I knew that something was going on. I am not stupid. I can see and smell the atmosphere. However, I would prefer to do it tomorrow in a better atmosphere. You

[Senator Moore]

have done almost everything you wanted to do today: you sat longer than expected, so why do you not kindly ask if there is a disposition from all of us to say, if you would like, that we could adjourn, keeping the rules with respect to every other item. I can see the exchange going on between two good friends there. Would you accept my suggestion? If I could only hear a reply, I would see that I am not alone. Am I alone in saying that?

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I am very flattered to hear Senator Prud'homme call me Mr. Minister. That is not quite correct.

Senator Prud'homme: Honourable senators, I belong to the old French tradition which says "once a minister, always a minister." So, to me, you are Mr. Minister.

Senator Robichaud: Honourable senators, I know that it is getting late and that we have already had a great deal of debate. When Senator Prud'homme says that I could obtain consent, I am sure that is the case. Still, certain senators have also asked that we get as far as we can through the Orders of the Day — and rightly so — because we were not able to get through them last week.

A little later, I shall ask for consent, but at the moment I believe I should press on.

Senator Prud'homme: Honourable senators, I wish to inform you that you will not get what you want, because it is my intention to speak to every item called by our distinguished Senate officers.

[English]

When the Orders of the Day are called — and I hope that someone will join me — we will speak on every item until you reach the one that you really want to reach. There may be one that you really want, and we will get up and ask for the adjournment. I am asking you again: Why don't we adjourn now, and start afresh tomorrow, on all the good items that you may have had in mind?

Senator Corbin has a very important resolution. If you give permission to him, you will have to give permission to the others. I have a speech prepared on the merger of the banks. If you give permission to one person, then why not give it to me or to this person or to that other one?

The Hon. the Speaker pro tempore: It was moved by the Honourable Senator —

Senator Prud'homme: Honourable senators, I move, seconded by Senator Stratton, that the Senate do now adjourn.

The Hon. the Speaker pro tempore: It is moved by the Honourable Senator Prud'homme, seconded by the Honourable Senator Stratton, that the Senate do now adjourn.

Is it your pleasure, honourable senators to adopt the motion?

Some Hon. Senators: No.

Some Hon. Senators: Yes.

The Hon. the Speaker: All those in favour of the motion will please say "yea".

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed to the motion will please say "nay".

Some Hon. Senators: Nay.

The Hon. the Speaker *pro tempore*: In my opinion, the "nays" have it.

FEDERAL NOMINATIONS BILL

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Stratton, seconded by the Honourable Senator Murray, P.C., for the second reading of Bill S-4, to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions.—(*Honourable Senator LeBreton*).

Hon. David Tkachuk: Honourable senators, our colleague Senator Stratton is to be commended for bringing forward Bill S-4, the Federal Nomination Act, which I will spend a few minutes to talk about today.

• (2150)

The bill would provide for significantly more transparency and objectivity in the selection of suitable individuals who are appointed by the cabinet to high public positions in Canada. It establishes a committee of cabinet to develop public criteria and procedures, and sets out a process to identify and assess candidates. More important, it provides for the parliamentary review of such appointments by the Senate.

Under the proposed law, the list of appointments for which hearings would have to be held would include those of the Governor General, the Chief Justice, the Senate Speaker, the Lieutenant-Governors, Territorial Commissioners, Supreme Court judges and, yes, honourable colleagues, senators.

It would also allow for a committee, if it so chose, to hold appointment hearings for a judge of the Federal Court of Canada or for a Superior Court judge. Parliament already has the right to

hold hearings on certain appointments such as the Privacy and Access to Information Commissioners. Where we are moving forward is by expanding the list to include significantly more positions.

There are also areas where we might want to consider strengthening this bill in committee; for example, by including ambassadors such as Mr. Gagliano on the list of those for whom hearings may be held.

In recent months, the soon-to-be-leader of the Liberal Party has been talking about how to address what he calls "a democratic deficit." Honourable senators, increased transparency in the process of appointing those who hold high office would be an appropriate place to begin.

Indeed, if honourable senators on the government side are wondering about whether to support the bill or not, they might want to consider the position of their future leader. A year ago, on October 22, in an address on the democratic deficit, Paul Martin said:

We should reform the process surrounding government appointments.

This was point five of a six-point plan to deal with the democratic deficit. He went on in that same speech to say:

The unfettered powers of appointment enjoyed by a prime minister are too great; from ambassadors and consuls general to regulatory agencies to museum boards, and the list goes on. Such authority must be checked by reasonable scrutiny conducted by Parliament in a transparent fashion.

When it comes to senior government appointments, we must establish a process that ensures broad and open consideration of proposed candidates.

To avoid paralysis, the ultimate decision over appointments should remain with the government. But a healthy opportunity should be afforded for the qualifications of candidates to be reviewed, by the appropriate standing committee, before final confirmation.

To this end, it will be necessary to determine which of the many thousands of appointments made annually would merit public review.

For example, I agree with the position championed by Professor Monahan that a process of mandatory review must apply to prospective Justices of the Supreme Court of Canada.

To determine which other senior appointments should also be subject to mandatory review in advance, we should turn to a parliamentary committee for direction. In this way, an improved but functional approach could be put into place in a transparent manner.

In considering reforms to this area, however, we must take heed of what not to do — as so graphically illustrated by congressional experience in the United States.

We want a system that sheds light on the appointments process for the public benefit. We do not want a system that creates a partisan circus with the effect of discouraging good people from public life. We do not want a kangaroo court.

But that need not be — and must not be — the case. Responsibly executed, such a process would actually insulate candidates from lingering suggestions concerning their qualifications by providing them an open forum to demonstrate their expertise and experience.

Honourable senators, this bill would help put into law the basic principle outlined by Mr. Martin in his speech, that senior appointments ought to be reviewed by a parliamentary committee. Under this bill, the committee hearings would be conducted by the Senate, thus addressing Mr. Martin's concerns about partisan wrangling, and there is no question that after the next election members opposite may be more prone to support the substance and principle of this bill since it will not be a Liberal Prime Minister who will be making many of these appointments.

I encourage all senators to help move this bill forward by supporting it at second reading.

On motion of Senator Cools, debate adjourned.

CRIMINAL CODE

BILL TO AMEND—SECOND READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Mahovlich, for the second reading of Bill C-250, to amend the Criminal Code (hate propaganda).—(*Honourable Senator Cools*).

Hon. Anne C. Cools: Honourable senators, I rise to oppose second reading of Bill C-250, an act to amend the Criminal Code (hate propaganda). It will amend the Criminal Code, section 318, the genocide, hate propaganda, hate speech section to add sexual orientation to the list of identifiable groups against whom genocide can be committed. Sexual orientation will be added to colour, race, religion and ethnic origin. Honourable senators, Bill C-250 will confer upon sexual activities and sexual preferences those immutable, morally neutral, physical, racial characteristics possessed by peoples of common origins. Further, honourable senators, the term "sexual orientation" is still undefined and unlimited in law.

Honourable senators should grasp the enormity and danger of the proposal before us. Senators should understand its goal and should unmask it for the menace that it is. The measure is humanely couched and articulated in terms of equality, but it is a cruel proposition intended to criminalize the verbal and written expression of moral opinion on human sexuality and on human sexual practices.

Human sexuality, human sexual practices and sexual lust have always gathered unto themselves considerable moral beliefs, moral judgment and moral opinion. Bill C-250 proposes to deploy the Criminal Code as an instrument to overturn the moral opinion and the moral order of millions of Canadians, therein to impose different moral orders based on different concepts of human sexuality.

Bill C-250 is directed at those Canadians whose moral opinions are unwanted by an elite group of homosexual rights activists, a group that is well connected to the government and who seek to overwhelm their opponents and to impose their moral views on them. This elite disagrees morally with millions of Canadians. Not content merely to disagree with them and to co-exist with them, this elite, by Bill C-250, seeks to persecute and to prosecute them criminally.

Bill C-250 is pernicious and unprecedented. It is a direct attack on Canadians — religious and non-religious Canadians — who hold strong moral views about human sexuality, about the human anatomy, about the human body and about the human body's purpose, design and function. They hold moral views about sexual practices such as sodomy, swinging, sado-masochism, threesomes and other forms of sexual activity. Not content with equality before the law, Bill C-250 seeks by coercion to establish domination over those who disagree and to subjugate them by the oppression and weight of the Criminal Code. It will subject them to criminal prosecution. It will subject millions of Canadians to prosecution.

Bill C-250 is not about tolerance, diversity and difference; it is not about live and let live and co-existence; it is not about privacy in the bedrooms of the nation, nor is it about privacy of sexual activities. Bill C-250 is about forming and building a legal base from which modern inquisitions of persons for their moral beliefs, values, ideas, standards and moral opinions will ensue.

Honourable senators, on February 29, 1968 a great senator, a great legal mind, Senator Daniel Lang, in opposing the creation of these Criminal Code sections 318 and 319, said in the Senate Special Committee on Criminal Code (Hate Propaganda):

...enacting of this law is a slur on the people of Canada...

Senator Lang's opposition was legendary, as was his great intellect. Bill C-250 is a slur on many Canadians.

• (2200)

Hon. Marcel Prud'homme: On a point of order, if my friend will allow me, this is such an important item on the agenda. When we have a long day such as this one, I would kindly ask the honourable senator to speak a little bit slower, because I want to listen. Others may answer you or agree with you, but it is very difficult to follow you. You have a very good text, with which we may agree or not, but to get it in French, I do not want to lose any of the important points you may raise, in your view — not in mine — and I would just like you to go slower, if you do not mind.

Senator Cools: Senator, your point is well taken.

Bill C-250 is a slur on many Canadians. It is a criminal prosecutorial tool to cleanse these Canadians of their moral opinions.

Honourable senators, I turn now to the 1970 origins of these Criminal Code sections, the origins being in the 1965 Report of Professor Maxwell Cohen, McGill University's Dean of Law. Senators should be aware of the sharp controversy, division and disagreement in Parliament, in the legal community, in the media and in the public about the creation of these genocide, hate propaganda sections. One critic, the late Alan Mewitt, Professor Emeritus of law, then editor of the *Criminal Law Quarterly*, in his 1967 Quarterly article, "Some Reflections on the Report of the Special Committee on Hate Propaganda," stated:

The report, in my opinion, represents everything that proposals for criminal legislative change should not be. It is attractive, superficially logical, factually quite accurate and completely misses the real point of any criminal law legislation.

Professor Mewitt died about a year ago. He had a great mind.

This is true of Bill C-250. It is everything criminal law should not be, but it seems attractive on the surface.

Another critic was Robert Hage, then a precocious law student, now a famous lawyer. In his article, "The Hate Propaganda Amendment to the Criminal Code," in the 1970 *University of Toronto Faculty of Law Review*, he stated:

But in urging the adoption of a new law the committee appears to have overlooked the consequences of making a particular act criminal. The Criminal Code should not be open to additions or deletions without more evidence than that provided in the Cohen committee's report. Not one member of the committee was a criminal lawyer; in fact, the committee called oral evidence from only one such person and based its findings on the harmful effects of hate propaganda on the study of only one psychologist. And yet, Bill C-3, which introduced this "new law" into the Criminal Code was based wholly on the recommendations of this committee.

I am trying to give honourable senators a flavour of the divisions —

Senator Prud'homme: The few senators left.

An Hon. Senator: We are all listening, though.

Senator Cools: Good.

Honourable senators, Professor Mewitt and Mr. Hage asserted that the Cohen Report was not solid ground upon which to found the law and, further, that the report was insufficient in its grasp of the criminal law, and these concerns were repeated throughout the debates. The bill had many incarnations and finally became Bill C-3 in the time of Minister of Justice John Turner.

Honourable senators, Professor Maxwell Cohen was most eminent. In his article, "The Hate Propaganda Amendments: Reflections on a Controversy," published in 1971 in the *Alberta Law Review*, he shared his recollections and some history of the creation of these Criminal Code hate provisions. He said:

In the voting on the Bill in the House...significantly a very large proportion of the House was absent on the Third Reading where the vote was 89 to 45, with 127 not voting or absent from the Chamber.

Pretty profound. He continued:

In the Senate...there was determined debate and a serious but unsuccessful effort was made to have the bill referred, before enactment, to the Supreme Court of Canada...

Professor Cohen — these are his reflections — also told us:

In general Canadian press opinion was strongly divided on the issues...

The professor also told us:

That organizations and individuals with unchallenged credentials in the areas of human rights and general civil liberties should have been so seriously divided on this legislation, as was Parliament itself, undoubtedly suggests that the argument is by no means all one way.

Professor Cohen, in his learned style, told us of the reluctance of many to pass such criminal law. Perhaps this might explain or inform us as to why the Minister of Justice, Martin Cauchon, did not introduce Bill C-250 as a government bill and chose instead to support it as a private member's bill, working towards its passage absent the principles of ministerial responsibility.

Honourable senators, the opposition of those, according to Professor Cohen, with unchallenged credentials in the field included the late, great Frank Scott, former Dean of Law, McGill University, known for his struggles against Quebec Premier Maurice Duplessis' padlock law and the oppression of Jehovah's Witnesses. Frank Scott's testimony before the Standing Senate Committee on Legal and Constitutional Affairs on April 29, 1969, is a must-read. He said:

There is nothing in the conditions of life in Canada today that warrants this extension of the criminal law. Hateful though this type of thing is, there is such a minimal amount of it that we ought not to tamper with the Criminal Code.

Honourable senators, the opposition of Senator Dan Lang, Senator Lionel Choquette, and former Senate Speaker George White was impressive. In the Commons, John Diefenbaker voted against Bill C-3. Others who opposed it also included Eamon Park, Vice-President of the Canadian Civil Liberties Association, Professor H.W. Arthur, Associate Dean, Osgoode Hall Law School, and Reverend Dr. E.M. Howse, past moderator of the United Church.

Honourable senators, I turn now to the legal definition of hate crime and the current social use of the term "hate." My concerns stem from the fact that the term "hate" is not being used as Mr. Cohen conceptualized, but is being used by certain homosexual rights activists to mean anyone or anything that disagrees with them. Political and moral disagreement is immediately branded as hate.

I cite an example on the floor of this chamber. Senator Mobina Jaffer, in this house on November 22, 2001, described senators' support — myself included — of marriage as the union of a man and a woman as hate. About my marriage bill and the senators supporting it, she said:

When honourable senators rise in this house to speak in favour of Bill S-9, I remind them that they are giving comfort to those who hate.

Senate Debates recorded this under the heading, "Influence on hate crimes of bill to remove certain doubts regarding the meaning of marriage." That was my bill — hate.

Senator Jaffer's insensitive statements reveal the problem. She, like many, has confused hate crime as a legal, criminal construct with crimes that are hateful and odious. In other words, she has confused Criminal Code hate crimes with hateful and odious crimes. Honourable senators, "hate crime" is a legal concept where the crime, the offence, is hate speech, hate propaganda and hate-mongering. It is not killing people. It is speech. It is expression.

Honourable senators, in the Aaron Webster murder, mentioned by Senator Jaffer, the crime was murder. A juvenile assailant has been charged with murder, not hate. By Bill C-250, the Criminal Code sections 318 and 319, if passed, will have no application to the Aaron Webster murder or to like instances, tragic and terrible as they are.

• (2210)

Many of the crimes described dramatically and rhetorically as hate crimes are truly hateful and odious crimes, but they are not

hate crimes as per sections 318 and 319; they are assaults, break and enters and other crimes, sometimes even murder, but they are not hate crimes. There is great confusion on this point, and I am hoping that it will get some elucidation.

On September 20, 1994, in the House of Commons, Svend Robinson, the sponsor of this bill, accused Roseanne Skoke of hate. She had a disagreement with him and he accused her of hate and called upon the Prime Minister to put Roseanne Skoke out of the Liberal Party. That is why I say that Bill C-250 is pernicious; it appeals to our good sense of justice and fairness for homosexual persons, but it proposes a scheme for criminal witch hunts.

Honourable senators should be aware of the trends in Canada toward persecution and prosecution of Canadians branded hateful for strategic purposes by certain political activists. I shall mention only three cases of such individuals, being Chris Kemping, a school teacher in British Columbia prosecuted on the strength of a letter he wrote to the editor without any complaint from students, parents or teachers; Scott Brockie, a Toronto printer; and Hugh Owens, a Saskatchewan prison guard, for expressing moral opinions about some homosexual sexual acts.

The Hon. the Speaker *pro tempore*: Honourable senators, I regret to inform the honourable senator that her time has expired.

Senator Cools, are you asking for leave to continue?

Senator Cools: I would ask for leave to continue.

The Hon. the Speaker *pro tempore*: Honourable senators, is leave granted?

Hon. Senators: Agreed.

Senator Cools: Thank you, honourable senators.

The January 20, 2000, *National Post* reported that Reverend Brent Hawkes of the Toronto Metropolitan Community Church testified before the Saskatchewan Human Rights Tribunal. Ian Hunter's article headlined "The battle of the biblical 'experts'" reported:

Rev. Hawkes cleared away contrary views by condemning Roman Catholicism and Judaism as "extreme," and fundamentalist interpretations as "satanic."

What is hate? Hate is a subjective thing.

Honourable senators, many individuals in this country are being prosecuted unjustly and unfairly for their moral standards and opinions while their antagonists make the most cruel and outlandish statements.

Honourable senators, the term hate is being used recklessly as a defamatory and prosecutorial tool of intimidation and silencing. More importantly, this use and meaning was not intended nor contemplated by Maxwell Cohen's report and his Criminal Code provisions. His backdrop was the Holocaust of the Jewish people. Any time I hear the word "holocaust," I reminded of Lord Shawcross' description of genocide. Remember his role in Nuremberg. He described it as black-hearted deeds. I say that to honourable senators because it comes to mind and I am also a great admirer of Lord Shawcross.

Mr. Cohen did not intend the term hatred to be applied to millions or hundreds of thousands of Canadians because of their moral opinions with which many may disagree. I wonder about lawyers and legal drafters who could intend such judgement on millions of Canadians and to create this proposed crime.

Honourable senators, I will now turn to some statements on human sexuality made in the context of the legal movement to separate human sexuality from moral and social boundaries. First, I shall cite Kathleen Lahey, a law professor and self-described lesbian. In her essay "The Charter and Pornography: Toward a Restricted Theory of Constitutionally Protected Expression" published in the 1986 book *Litigating the Values of a Nation: The Canadian Charter of Rights and Freedoms*, Professor Lahey stated that:

...some lesbian feminists have decided not to take political action against heterosexual pornography because they feel obligated to show solidarity with gay men who are experimenting with pornography, sadomasochistic practices, or pedophilia as forms of personal expression.

I note that forms of sex have now become "forms of personal expression."

Next I quote the Supreme Court of Canada in its December 2000 judgement in the pornography case of *Little Sisters Book and Art Emporium v. Canada (Minister of Justice)*. Mr. Justice Ian Binnie stated:

The appellants, supported by the interveners LEAF and EGALE, contend that homosexual erotica plays an important role in providing a positive self-image to gays and lesbians.... Erotica provides a positive celebration of what it means to be gay or lesbian. As such, it is argued that sexual speech in the context of gay and lesbian culture is a core value.... Erotica, they contend, plays a different role in a gay and lesbian community than it does in a heterosexual community.... Gays and lesbians are defined by their sexuality and are therefore disproportionately vulnerable to sexual censorship.

I would challenge all of this.

Justice Binnie continued:

The intervener LEAF took the position that sado-masochism performs an emancipatory role in gay and lesbian culture and should therefore be judged by a different standard from that applicable to heterosexual culture.

Honourable senators, I wanted to give you a flavour of what is going on in the community. What we are dealing with here, clearly, is that persons who adopt moral positions about sadomasochism or any form of human sexuality can be in for a difficult time. You can see the tendency.

Honourable senators, I invite you to oppose Bill C-250. It pretends to be preoccupied with human rights and equality issues; it is not. It is about the subjection of millions of Canadians to criminal prosecution because they express moral opinion about human sexuality and human sexual practices in accordance with their long held or shortly held convictions, convictions that everybody does not have to share, but they are theirs.

Honourable senators, I subscribe to you that Bill C-250 is dangerous legislation, which, if passed, will hold an enormous potential for abuse and excess.

I urge honourable senators not to support Bill C-250.

On motion of Senator St. Germain, debate adjourned.

• (2220)

[Translation]

HOLOCAUST MEMORIAL DAY BILL

SECOND READING—DEBATE ADJOURNED

Hon. Marie-P. Poulin moved that Bill C-459, to establish Holocaust Memorial Day, be read the second time.—(*Honourable Senator Robichaud, P.C.*)

She said: Honourable senators, I would like to propose the second reading of this legislation. In addition to Senator Fairbairn, there are a number of colleagues who have asked to second this bill. I refer to Senators Adams, Atkins, Austin, Bacon, Banks, Beaudoin, Biron, Bryden, Callbeck, Chalifoux, Christensen, Cook, Cools, Cordy, Day, De Bané, Di Nino, Downe, Eyton, Ferretti Barth, Finnerty, Fraser, Furey, Gill, Grafstein, Gustafson, Hubley, Johnson, Joyal, Kenny, Kirby, Kolber, Kroft, LaPierre, Léger, Lawson, Lynch-Staunton, Mahovlich, Maheu, Massicotte, Merchant, Milne, Moore, Oliver, Pearson, Plamondon, Pépin, Phalen, Poy, Ringuette, Robertson, Roche, Rompkey, Smith, Sparrow, Spivak, Stratton, Stollery, Tkachuk, Watt and Wiebe.

Your Honour, with your consent and that of the honourable senators, I would propose that we accept these multiple seconders. I have been told that a number of senators were travelling last week and so, not everyone was approached. This list is not complete: if other honourable senators wish to second this motion as well, would they please so indicate?

[English]

The Hon. the Speaker *pro tempore*: Is leave granted to have all those senators seconded?

Hon. Eymard G. Corbin: Honourable senators, this is an extremely dangerous practice. I do not know what this all amounts to, but I did not hear my name, which would lead people outside to believe that I do not agree with something. I find that offensive, and I protest.

Hon. Gerry St. Germain: Honourable senators, I also disagree. Senator Corbin has a salient point. When you start mentioning names —

The Hon. the Speaker *pro tempore*: I have recognized Honourable Senator Kinsella.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): The point raised by Senator Corbin is very important. I happen to be the seconder of this bill, and my name was not on that list either. Notwithstanding that, I do not think this is a proper practice. I will be speaking in support of the motion after we hear the substantive argument for it. This practice is out of order and is certainly not in the tradition of this place.

Senator St. Germain: Honourable senators, I think I made my point. I do not know if it has been recorded. I agree with Senator Corbin. When you start mentioning names on issues like this, there is a litany of reasons some individuals could be castigated into a certain segment of society, which is totally unfair by virtue of the approach that was used. I feel that it would be a regressive move for this place if we allow this to continue. It is important that we stand and not allow this type of behaviour to take place here.

[Translation]

Hon. Marcel Prud'homme: Honourable senators, I find what is going on tonight totally disgusting and even sickening. We are not so naïve as not to have seen Senator Grafstein circulate among senators to try to get signatures for such a noble cause.

The Holocaust was a horrific page in history and some senators were not asked to sign the document. I agree with Senator St. Germain and Senator Corbin. We are told that we could add our names to the list.

[English]

This is not the United States Senate where everyone feels obliged to sign something. There are rules. I agree with Senator

Kinsella. Let the process take its course. I do not know anyone here or in the House of Commons who would disagree with the horror of the Holocaust, but this is not the way to proceed.

[Translation]

We are attempting to play down one of the greatest horrors of the 20th century. I hope Senator Poulin gets to make her speech, but she should not feel obliged to name some senators at the risk of forgetting others. I totally agree with Senators Kinsella, Corbin and St. Germain. I want to hear what the honourable senator has to say because I, too, want to take part in this debate.

[English]

The Hon. the Speaker *pro tempore*: Leave is not granted.

Senator Poulin: The point is well taken.

Hon. Francis William Mahovlich: Will this list of names be wiped from the record? Is that not what the honourable senator is asking?

Senator Cools: The record is the record.

Senator Corbin: On the point of order, perhaps I did not make myself clear. We have one way of affirming our support or non-support to any initiative in this place, and that is by our vote. We do not have to make speeches. All we have to do is vote, and that is sufficient for a motion to carry or to be defeated. What I do not like about this procedure, and it is important for everyone here to understand, is that when Senator Grafstein approached me and asked for my signature, I informed him that I have no problem with the aim he is seeking to achieve. However, I reminded him that on a number of occasions in this place I expressed serious opposition to giving a blank cheque to any proposition to establish holidays, national days and what have you without having the question examined by a committee. I have also suggested that there ought to be a protocol for the establishment of these observances and commemorations. For that reason, and that reason only, I told Senator Grafstein I did not want him to put my name to his initiative. Is that plain enough?

Senator St. Germain: On the same point of order, Madam Speaker, given the exclusion or inclusion in a pattern of behaviour or a process of this nature, partisanship could be a part of the scenario by virtue that I was never approached by Senator Grafstein. The fact remains that this process is similar to taking petitions, and I think it is reprehensible. You can say that there is no partisanship, no intent, but if someone happens to be away, they could be excluded or included, one or the other. I feel that this is detrimental to our democratic process, and I think it is horrific if we allow ourselves to be subjected to actions of this nature.

Senator Poulin: Honourable senators, before starting this speech, I should like to make a point. Counsel was taken, and yes, multiple secondment can be accepted, but as Her Honour said very clearly, only by unanimous consent. There is not unanimous consent. Therefore I will simply move second reading and go on with my speech.

• (2230)

There was no intention whatsoever to exclude or include anyone in any way on the part of Senator Grafstein, or any of the colleagues who approached other colleagues. There was no intent whatsoever. However, I do agree with my colleague Senator Corbin when he said that the move could be misinterpreted, therefore better not to do it.

Senator Prud'homme: And it will be.

Senator Poulin: It could be, and I totally agree that there is a danger and we should not risk it in this chamber.

Senator Prud'homme: Why did you do it, then?

Senator St. Germain: Where do we go from here?

Senator Stratton: She has already told you.

Senator Poulin: I therefore rise today to sponsor and speak on the bill to establish the Holocaust Memorial Day.

[Translation]

First, honourable senators, what is in this bill? It would establish Holocaust Memorial Day. The preamble to the bill recognizes:

That the Holocaust refers to a specific event in history;

That six million Jewish men, women and children perished under this policy of hatred and genocide;

That millions of others were victims of that policy because of their physical or mental disabilities, race, religion or sexual orientation;

That the terrible destruction and pain of the Holocaust must never be forgotten;

That systematic violence, genocide, persecution, racism and hatred continue to occur throughout the world;

That parliamentarians have a responsibility to protect Canadians and to educate them;

That the Day of the Holocaust, as determined in each year by the Jewish lunar calendar, is an opportune day to reflect on and educate about the enduring lessons of the Holocaust and to reaffirm a commitment to uphold human rights.

Second, honourable senators, why is a Roman Catholic, francophone woman from northern Ontario rising today to sponsor this bill? For several reasons, but I will mention three of them:

First, it is our responsibility in the Senate to represent minority groups in Canada, whether they are visible, cultural, linguistic or religious minorities;

Second, it is our responsibility to protect Canadians with appropriate legislation in a world where terrorism could gradually paralyze our personal, professional, economic and sometimes political choices;

Third, it is our responsibility to educate Canadians, young and old, for example.

[English]

Honourable senators, one of the reasons motivating me to sponsor the bill to establish the Holocaust Memorial Day is that we, as senators, have the responsibility to lead by example. Therefore, as we represent minorities, be they visible, cultural, linguistic or religious, we also have the opportunity to champion each other's causes. Individuals, communities and countries of the world are at their most strong when they identify with and remember those who suffer and die needlessly and cruelly at the hands of tormentors, whose sole purpose is the elimination of difference in order to calm their own innate fears and inadequacies.

Empathy and righteousness are born when we share in the pain of those who are left alone to remember. Identifying with the suffering of others is in part a recognition of the true nature of Canada's spirit. It will draw us closer to the inevitable discovery that we are more alike than different.

Yes, a Holocaust Memorial Day would remind us all that during a most disturbing period in our past, millions of lives were cruelly eliminated, but more accurately, a Holocaust Memorial Day would bring us all closer to those millions of men, women and children who were mindlessly eliminated from fulfilling their roles in that past, in this our present and, for their children's children, the future.

On every November 1, we remember those soldiers who fought and died for our freedom to be the best that we can be. A Holocaust Memorial Day would remind us of those lives that could have been. Such a day would permit us to reflect on and educate about the enduring lessons of the Holocaust and to reaffirm our commitment to uphold human rights, but much more, the victims were fathers and mothers, and daughters and sons, and grandparents.

Through this process of remembering, all Canadians will discover and identify with a universal truth that this should never happen again; not to Jews, not to any other culture, or religion, or ethnic group, or to any individual personal otherness. Forgetting is too often akin to denial, and the refusal to face our darkest hours. Remembering affords us the opportunity to sing the praises of the human spirit, to bless those whose lives were directly affected by atrocities, and to wish upon our children a future devoid of that which taints our past.

It is therefore an honour for me to ask honourable senators to support this important bill.

Senator Prud'homme: Would the Honourable Senator Poulin allow a question?

Senator Poulin: Yes.

[Translation]

Senator Prud'homme: Honourable senators, how did this bill come to be before the Senate? I was expecting you to tell me what exactly happened in the House of Commons. I have a very detailed record of proceedings here. How did this Bill C-459 get to us so quickly from the House of Commons?

This reminds me other times; I have been sitting in this place for 40 years, and I have seen a thing or two. I would like you to fill us in. We all had a glimpse of Senator Grafstein in a conference. Could you elaborate on this debate that took place in the House of Commons?

I repeat, the Holocaust is one of the worst crimes against humanity committed in the 20th century. Tomorrow, you will hear other senators talk about what the Ukrainians suffered. I want to give you my support for the right reasons, and not for obscure reasons.

Senator Poulin: Honourable senators, I thank Senator Prud'homme for supporting so generously the intent of this bill. Since he has in front of him the *Hansard* of that day in the other place, I am sure he will gladly do so.

Senator Prud'homme: I rise on a point of order. The honourable senator is assuming that I have the actual documents in front of me. What I have here is a copy of last Saturday's *The Globe and Mail*, in which there was a report on the Ukrainian tragedy.

• (2240)

If Senator Poulin wants to see my documents, she will notice that this concerns all the bills to come. I implore you, you are too intelligent; when you do not know, do not presume. Whether you are right or not, you cannot presume my intentions, since I still do not know what they are.

[Senator Poulin]

Senator Poulin: Honourable senators, I must have misunderstood Senator Prud'homme when he said he had in front of him a summary of the debate that was held in the House of Commons. I know that, at the other place, there was unanimous consent by all the political parties for this legislation to be referred to the Senate. I am therefore following up on their request.

[English]

Senator Kinsella: Honourable senators, I rise to support the bill at second reading. In doing so, I wish to call the attention of all honourable senators to the fact that each and every one of the legislative assemblies of the provinces of Canada, all 10, have passed this resolution. It has also been passed, as we now just learned — we know because the bill came from the other place — in the other chamber as well. If we have now 11 of the 12 assemblies making up the provinces and the Parliament of Canada and they have all adopted it, then we should look carefully to this bill.

When I asked myself why Parliament should also wish to join those other legislatures in recognizing an observance of the Holocaust, the simple answer to the question is that we must remember in order that we never forget. As Pope John Paul II affirmed, as you will recall during his visit to Jerusalem and his address at the Yashem:

We wish to remember but we wish to remember for a purpose, namely, to ensure that never again will evil prevail as it did for the millions of innocent victims of Naziism.

Also, it seems to me upon reflection, honourable senators, that we cannot escape the realization that the Holocaust was engineered and instigated not by an uninformed society but, rather, by educated members of a modern and contemporary society of the era. The attendees at the conference that was tasked by Hitler with finding "the final solution to the Jewish question" were not uneducated people. Believe it or not, most of the participants at that meeting were lawyers. Also, one notes — and my students of philosophy reflect upon this — that the great philosopher Martin Heidegger joined the Nazi Party and wore the Nazi uniform to keep his job at Hamburg University.

Honourable senators, on the lessons to be learned and why we should remember, out of the ashes of Auschwitz, out of the ashes of Dachau, our global communities have risen with new knowledge and power, although new knowledge and power earned at a great cost. We learned of humanity and brotherhood and the importance of intervention; of survival and the value of understanding. We gained an international body, the United Nations. By its Charter, we have determined, as the Charter says, to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind; to reaffirm our faith in fundamental human rights and the dignity and worth of the human person, and the equal rights of men and women and of nations large and small; to practise

tolerance and live together in peace with one another as good neighbours, and to unite our strengths to maintain international peace and security; to ensure, by the acceptance of the principles and the institutions of methods, that armed force shall not be used save in the common interests; and to employ international machinery for the promotion of economic and social achievement and advancement for all peoples.

Honourable senators, the world was shattered by the tragedy of the Holocaust and all citizens were touched by the stories of suffering and also those stories of survival. In my own city of Fredericton, there lives an extraordinary woman, an author, historian, a teacher. Her name is Eta Fuchs Berk. She experienced the Holocaust firsthand, as a survivor who came through one of the most dreaded of the concentration camps: Auschwitz. Her story is incredible and she tells it in her book, *Chosen: A Holocaust Memoir*. She speaks eloquently to people across our province and country about the atrocities she faced and the relief she felt with the implausible freedom that she fortunately regained.

Honourable senators, we must remember because the Holocaust is a record of man's inhumanity to man, a policy of extermination directed at a people just because of their physical or mental disabilities, their race, their religion, their sexual orientation. It is not merely a part of Jewish history to be remembered by Jews; it is part of world history to be remembered by all.

Honourable senators, I support this bill at second reading.

Hon. Mobina S. B. Jaffer: Honourable senators, I rise today to support this bill, but I am not prepared tonight. I intended to speak at another time.

I am very concerned that my name was not on that list. With my background, it is very offensive for the record to be read tomorrow and the world to think that I was not supportive of this bill. The reason for this bill is to unite us, not to divide us; to create harmony in society, not to divide us.

I leave next week to work in Israel with Muslim and Jewish women. I have been working this whole year across this country with Muslim and Jewish women to bring about harmony so that we do not have another Holocaust. I believe the method that has been used tonight is dividing us. When I grew up, my grandmother taught me to look at history and then see how we build harmony; then look at ways in which we can work together so that we can never have another Holocaust.

I am also a survivor of torture. It so happens that my husband is sitting in the gallery. Speak to him. He will tell you what torture is. He has suffered torture.

Let us not divide ourselves today by saying that some are on the list and someone like me, from a minority background, is not on the list. I was never even asked to be on the list. When I was growing up, my grandmother taught me that harmony means that you bring people together. Harmony means that you bring black and white together. She taught me how to play the piano. Unfortunately, I do not play it well, but she always told me, "Mobina, remember you have to play on the black keys and on the white keys."

Honourable senators, we cannot afford to divide ourselves. We must include everyone here if we are to have lists. Just as there is no piano to create harmony, and we must play on both black and white keys to create harmony in society, we cannot exclude some to make a point.

Some Hon. Senators: Hear, hear!

Senator Corbin: Honourable senators, I apologize to the house for the degree of heat expressed in what I had to say earlier. However, I do not intend to withdraw one word of what I said.

Let me be clear about that.

• (2250)

Once again, honourable senators, we have a bill before us, which, for all practical purposes, does not recognize the Senate, the work of the Senate and the contribution of senators. If you read attentively the preamble of the bill —

[Translation]

You will read, and I quote:

...the House of Commons is committed to using legislation, education and example to protect Canadians from violence, racism and hatred and to stopping those who foster or commit crimes of violence, racism and hatred.

The Senate is not invited in this bill to join the House of Commons. The Senate has been excluded, deliberately or otherwise, I do not know. However, it seems clear that the words we should read in this clause is not the House of Commons only, but the Senate and the House of Commons. The Parliament of Canada!

We all feel strongly about condemning the Holocaust, this horrible crime, so that it will never be repeated; although contemporary history shows us that this same type of crime continues to be committed in various places around the world. It is important that the Senate be included in this bill.

Second, and for the reasons I set out at the very beginning of this debate, I think that the bill should be referred to a specific senatorial committee, namely the Standing Senate Committee on Legal and Constitutional Affairs, which has looked into the whole issue of designating memorial days a few times already. I am not against this initiative or its objectives. Like anyone else, I too deplore the Holocaust.

I was born in 1934. I grew up during World War II. Soon after, I saw the shocking movies showing what happened in these concentration camps. I saw the mass graves, the ovens. I took my three young daughters to Europe, to visit these concentration camps, these death camps, so that they could absorb the horrific capacity for hate that the human heart can generate and never forget what they saw that day.

I think the bill should be referred to committee for a quick review, and appropriate debate. While I have no intention of opposing the bill, we need further clarification regarding clause 2 of the bill:

"2. Yom ha-Shoah or the Day of the Holocaust, as determined in each year by the Jewish lunar calendar, is proclaimed as "Holocaust Memorial Day — Yom ha-Shoah".

If I have properly understood Senator Grafstein's explanation, this memorial day is a moveable date in the Jewish calendar. This has never been the case for any memorial day approved by Parliament until now. I am not opposed in principle, but this does certainly have practical implications, since the date will change from year to year because the Jewish calendar is based on the lunar calendar, if I have understood this correctly. We are entitled to explanations and will make a final decision once the bill comes back from committee. That is all I wanted to say. I hope that what I said at the beginning of Senator Poulin's speech has not been misinterpreted. I was wholly justified, moreover, and was backed up, moreover, by the comments made by our colleague with experience of the horrors under Idi Amin in Uganda. It is with all the goodwill in the world that I make this suggestion, and it is my intention after the second reading stage to move that the bill be referred to committee.

[English]

Senator St. Germain: Briefly, honourable senators, I too support this bill 1,000 per cent. There is no question of where my intentions are. The only fear I have, and I am still not completely satisfied, is similar to what it was like in the 1950s in the United States when lists were developed against people. That is a dangerous practice.

I listened to Senator Jaffer carefully. I can empathize, I believe, with her inner feelings in regard to how this affects her. As a Metis in this country, I experience discrimination. However, I am concerned about this very institution, how people conduct themselves in it and how they go about bringing forward issues in a manner that could be detrimental to fellow colleagues. I do not believe that what was done was done with malice or with any intent to hurt, but the very method that was used is hurtful, could

be damaging and could be interpreted by those who wish to in the wrong way against individuals. I believe this is a horrific standard to set, and my understanding is that the senator who presented this withdrew. However, once it is on the record, it is on the record. I do not believe that you can withdraw anything that is on the record. The record will speak for itself. I hope that this will be the only time that this place will witness this kind of incident for as long as it continues to exist.

Hon. Richard H. Kroft: Honourable senators, I had no intention of speaking. However, let me say, I have a great deal of attachment and caring about this issue, and I have the greatest of appreciation for those who have spoken so warmly and compassionately tonight.

I was not the originator of what happened here in the process of bringing this from the other side. I saw it early on as it arrived from the other place. I had no idea that it was happening. It arrived here, it was shown to me and my advice was sought as to what to do with it. I was preoccupied with something else, and it went to someone else.

Within a few hours, I was told that this bill was coming forward and asked if I could speak to anyone in order to broaden the base of support for it, would I do so. The intention was, and I can say this certainly to the extent of my own limited involvement, to have every single senator in this chamber on that list. If names are missing, it is because of the forces of time and the busyness of what we were doing. People ran out of time in making their calls and doing their checking.

• (2300)

We sometimes face the faults of unintended consequences and I think this is an example here tonight. The intention was to bring everyone in this chamber, who so chose, of course, under one umbrella on this bill. It took a terribly unfortunate turn, and I fully appreciate and accept some of the things that have been said. Senator Grafstein and anyone else can, and I am sure will, speak for themselves. The record will show, perhaps inadvertently, what it did. However, I think the record should equally show that it was both the intent and the expectation of myself and everyone else who was involved in gathering support for this initiative that it meant to represent the thoughts and feelings of this entire chamber.

Even though my involvement was partial, I take full responsibility to that extent. I hope that anyone who was hurt in the process will understand that it was through inadvertence, and that the greater meaning of what we have done here will rise to the fore. Perhaps we have all learned a lesson in terms of process and thoughtfulness that might bear us well in other circumstances.

[Translation]

Senator Prud'homme: Honourable senators, on a point of order. I would like to know how such a decision can be taken. I do not understand how the seconder of a motion, whether it be Senator Chaput or Senator Robichaud, can be chosen so easily. Anyway, I would also have moved the adjournment, since I have a speech I would like to make. But I would like to find out eventually how the seconder of a motion is chosen, without his or her knowledge. I do not object, on the contrary.

[English]

Hon. Terry Stratton: Could this not be expunged from the record? Can that happen with consent of this chamber? Why could it not?

Senator Poulin: I agree with my colleague here. Since unanimous consent was not agreed to, the advice that I was given is that if the unanimous consent is not given, Madam Speaker, that the names would not appear in the record. That is the advice that I was given. Therefore, it was not the intent of anyone here to include and exclude. I would like to thank my colleague, Senator Jaffer, for her courage in explaining extremely well the danger that was done here. To tell you the truth, there was a mistake that was done and I am really sorry.

Senator Stratton: Honourable senators, I move that all references to names with respect to this be removed from the record.

Senator Poulin: I object.

Senator Prud'homme: No, I object, what has been said has been said.

Senator Cools: I associate expunging records with Nazis.

Some Hon. Senators: Order, order.

The Hon. the Speaker pro tempore: Leave is not granted.

Senator Cools: Burning records, burning books — everybody can talk about racism —

The Hon. the Speaker pro tempore: Order. I believe leave is not granted.

On motion of Senator Cools, debate adjourned.

[Translation]

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, if there is unanimous consent, I move that all remaining items on the Order Paper be allowed to stand in their place on the Order Paper until the next sitting.

The Hon. the Speaker pro tempore: It was moved by Senator Robichaud, seconded by Senator Rompkey, that the Senate do now adjourn.

Hon. Marcel Prud'homme: On a point of order. I just want to indicate that if had we proceeded as was suggested last Thursday, tonight's unfortunate sitting would never have occurred. We were supposed to adjourn at 6 p.m. That is what we were told last Thursday. In fact, I warned Senator Robichaud that the item should not have been debated tonight, because I was negotiating something with members of Parliament and senators on which we would all have agreed. They chose not to listen to us.

The Hon. the Speaker pro tempore: Is it your pleasure, honourable senators, to have all remaining items on the Order Paper be allowed to stand in their place on the Order Paper until the next sitting?

Some Hon. members: Agreed.

Motion agreed to.

The Senate adjourned until Tuesday, October 28, 2003, at 2 p.m.

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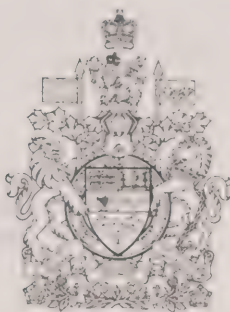
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OFFICIAL REPORT
(HANSARD)

Tuesday, October 28, 2003

—

THE HONOURABLE DAN HAYS
SPEAKER



CONTENTS

(Daily index of proceedings appears at back of this issue).

OFFICIAL REPORT

CORRECTION

[Translation]

Senator Eymard G. Corbin: Honourable senators, I ask leave of the Senate to make a correction to the *Debates of the Senate* of Tuesday, October 27, 2003, to the French text on page 2305, fifth paragraph. The first two lines of the paragraph read:

Le Sénat n'est pas invité dans ce projet de loi à se joindre à la Chambre des communes. La Chambre des communes a été exclue délibérément or autrement, je l'ignore.

The last sentence should read:

La Chambre des communes nous a exclus délibérément ou autrement, je l'ignore.

The English reflects exactly what I meant.

Hon. Marcel Prud'homme: That is what you said.

[English]

The Hon. the Speaker: Is it agreed, honourable senators?

Hon. Senators: Agreed.

CORRECTION

The Hon. the Speaker: Honourable senators, yesterday, Senator Cools drew attention to the need to make a correction in the Senate Hansard of Thursday, October 23, at page 2219, which concerned my ruling on the point of order raised by Senator Stratton on Bill C-41. The *Debates of the Senate* read:

Senator Cools also participated in the discussion on this point of order. The senator raised several issues in her intervention. First, Senator Cools expressed her understanding of the nature of these omnibus amendment bills, suggesting that they did not indeed have to possess a common theme.

Unfortunately, the *Debates of the Senate* do not correctly reflect this part of my ruling. In my ruling of October 23, 2003, which can be found in our official record, the *Journals of the Senate* at page 1207, I state:

Senator Cools also participated in the discussion on this point of order. The Senator raised several issues in her intervention. First, Senator Cools expressed her understanding of the nature of these omnibus amendment bills suggesting that they did indeed have to possess a common theme.

I thank Senator Cools for bringing this error in the Senate Hansard to our attention, and I would ask that it be corrected so that it conforms to the ruling as found in the *Journals of the Senate*.

Is it agreed, honourable senators?

Hon. Senators: Agreed.

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THE SENATE

Tuesday, October 28, 2003

The Senate met at 2 p.m., the Speaker in the Chair.

[Translation]

Prayers.

ROUTINE PROCEEDINGS

SENATOR'S STATEMENT

THE HONOURABLE MICHAEL A. MEIGHEN
MS. KELLY MEIGHEN

UNIVERSITY OF NEW BRUNSWICK—
CONGRATULATIONS ON RECEIVING
DOCTORAL DEGREES

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, on Thursday last, the University of New Brunswick came together for its fall convocation, and our colleague the Honourable Senator Michael Meighen and Ms. Kelly Meighen were each conferred the doctoral degree *honoris causa*.

The neo-doctorates thereupon spoke to the graduands, pointing out that for the students to be successful and fulfilled in their lives, each will have to set new goals for themselves, rise to new challenges and open their minds.

The Doctors Michael and Kelly Meighen then counselled the following:

You must strive to understand yourselves, not only because self-knowledge holds the key to success but also because, without knowledge, there can be no wisdom and no true happiness.

No doubt this sentiment was built on that great Shakespearean line from Hamlet:

To thine own self be true... Thou canst not then be false to any man.

All honourable senators know of the tremendous support that our colleague the Honourable Senator Meighen gives to the Shakespearean movement in our country, in particular, support of the Shakespearean theatres in Stratford. For that reason, honourable senators, and for many other important causes in which Senator Meighen and his wife participate as philanthropists and community builders, I think you will agree with me that kudos are well-deserved, and we extend our congratulations to them.

SCRUTINY OF REGULATIONS

THIRD REPORT OF JOINT COMMITTEE TABLED

Hon. Céline Hervieux-Payette: Honourable senators, I have the honour to present the third report of the Standing Joint Committee for the Scrutiny of Regulations, on broadcasting licence fees.

[English]

STUDY ON NEED FOR NATIONAL SECURITY POLICY

REPORT OF NATIONAL SECURITY AND DEFENCE COMMITTEE TABLED

Hon. Joseph A. Day: Honourable senators, I rise on behalf of the Standing Senate Committee on National Security and Defence. The National Security and Defence Committee is ready to file its report today, but Senator Kenny is not here. I have copies of the report, but we do not have copies for all of the members yet. I will ask your consent, honourable senators, to revert to item number 3, Presentation of Reports from Standing or Special Committees, following the vote at 3:30 p.m.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I did not quite get what was said.

Senator Graham: The honourable senator wants to revert later, since he does not now have enough copies.

The Hon. the Speaker: Honourable Senator Kinsella is not clear on what leave is being requested.

• (1410)

Senator Day: Honourable senators, I am asking that the Standing Senate Committee on National Security and Defence have the permission of the Senate to revert to item number 3 on the Daily Routine of Business, to table a report of the National Security and Defence Committee later today. I expect that that will be following the vote this afternoon at 3:30 p.m.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. J. Michael Forrestall: For clarification, I wonder if the honourable senator could indicate whether this is a report stemming from work done by the Subcommittee on Veterans Affairs?

[English]

Senator Day: No, honourable senators, this is the report that we have been dealing with in committee entitled "Canada's Coastlines: The Longest Undefended Borders in the World."

Senator Forrestall: Leave is not granted.

Senator Day: Honourable senators, on behalf of the Standing Senate Committee on National Security and Defence, I would then like to table these reports on behalf of the committee.

Senator Kinsella: He is the vice-chair.

Senator Lynch-Staunton: How dare he supersede the chairman?

Senator Forrestall: Get your act together!

The Hon. the Speaker: Honourable senators, just as a reminder, we are on the item of Presentation of Reports from Standing or Special Committees, and the Honourable Senator Day is tabling the report. Is that right?

Senator Day: That is correct.

The Hon. the Speaker: No leave is required to table a report.

BUSINESS OF THE SENATE

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, perhaps I could have the indulgence of the house for just a moment. One of our colleagues has collapsed. Senator Ferretti Barth is now being attended by Dr. Keon and by an ambulance, and that is why so many senators were out of the chamber for just a few minutes. Senator Ferretti Barth is receiving care at this very moment, and we will report back to you when we have any news.

[Translation]

CLERK OF THE SENATE

2003 ANNUAL ACCOUNTS—NOTICE OF MOTION TO REFER TO INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION COMMITTEE

Hon. Lise Bacon: Honourable senators, I give notice that tomorrow, Wednesday, October 29, 2003, I will move:

That the Clerk's Accounts, tabled on October 27, 2003, be referred to the Standing Committee on Internal Economy, Budgets and Administration.

AGRICULTURE AND FORESTRY

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Donald H. Oliver: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Agriculture and Forestry have the power to sit at 5:30 p.m. today, even though the Senate may then be sitting, and that Rule 95(4) be suspended in relation thereto.

Motion agreed to.

[Translation]

OFFICIAL LANGUAGES

BILINGUAL STATUS OF CITY OF OTTAWA—PRESENTATION OF PETITION

Hon. Jean-Robert Gauthier: Honourable senators, pursuant to rule 4(h), I have the honour to present petitions bearing 2,000 more signatures, thereby bringing the total to date to 12,000 petitioners who request that Ottawa, the capital of the country, be declared a bilingual city, reflecting the linguistic duality of Canada.

The petitioners call upon the Parliament of Canada to consider the following:

That the Canadian Constitution provides that English and French are the two official languages of our country and have equality of status and equal rights and privileges as to their use in all institutions of the government of Canada;

That section 16 of the Constitution Act, 1867 designates the city of Ottawa as the seat of government in Canada;

[English]

That citizens have the right in the national capital to have access to the services provided by all institutions of the government of Canada in the official language of their choice, namely English or French;

That Ottawa, the capital of Canada, has a duty to reflect the linguistic duality at the heart of our collective identity and characteristic of the very nature of our country.

Therefore, your petitioners ask Parliament to confirm in the Constitution of Canada that Ottawa, the capital of Canada, is officially bilingual, pursuant to section 16 to the *Constitution Act*, from 1867 to 1982.

• (1420)

QUESTION PERIOD

THE ENVIRONMENT

NEW BRUNSWICK— INFRACTIONS OF IRVING COMPANIES

Hon. W. David Angus: Honourable senators, my question today relates to my new-found portfolio of protector of the environment. It also deals with New Brunswick's first family, the Irvings. I should add that it does not deal directly with the issue of federal cabinet ministers receiving free salmon fishing trips and free flights, but it might affect the quality of fishing in New Brunswick waters.

My new favourite governmental environmental deficit topic leads me to point to recent revelations that effluent from the Irving pulp mill in Saint John, New Brunswick, was so toxic that it killed trout in 239 tests over a five-year period, and yet the Irving company was charged only once. These revelations emanate from Environment Canada in a submission to the Commission for Environmental Cooperation Secretariat, which is considered to be the environmental watchdog for the North American Free Trade Agreement.

Furthermore, apart from the fish-kill tests, Irving companies were guilty of hundreds of violations of other federal laws over the period 1996 to 2000.

My question is for the Leader of the Government in the Senate: Does she have any detailed information explaining why the Irving companies were charged only once for these many infractions of environmental laws over the past five-year period?

Hon. Sharon Carstairs (Leader of the Government): First, let me welcome the honourable senator to his new critic responsibilities. I suggest that he take good lessons from the Honourable Mira Spivak, who is an outstanding environmentalist and is highly respected for her views on both sides of this chamber.

In terms of the Irving pulp mill spills, I must tell the honourable senator that this is the first time I have heard of them. Therefore, I have absolutely no details for him and will have to take the question as notice.

ENFORCEMENT OF STANDARDS AGAINST PULP MILLS

Hon. W. David Angus: Honourable senators, in light of these revelations, it is somewhat ironic that Arthur Irving, the current head of the Irving family, was named an Officer of the Order of Canada last week "...for positioning his company at the vanguard of environmental innovations." That quote is taken from *The Ottawa Sun* of October 3, 2003, and from the Governor General's citation.

My supplementary question deals with the recommendation by the Commission for Environmental Cooperation that a full investigation be launched into complaints that Canada is failing to enforce environmental laws with respect to 12 pulp mills. Apparently such an investigation requires political approval of two of the three NAFTA countries.

Would the Leader of the Government in the Senate please tell us where her government stands on this request? At the same time, does she have any insight into what her future leader, Paul Martin, thinks in this regard? He is also a beneficiary of the Irvings' largesse recently, to the extent of \$100,000. Would she please provide this information for me?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, let me begin by saying how much I regret that the honourable senator has called into some disrepute the Order of Canada. As he knows, it is the Chief Justice of the Supreme Court of Canada who chairs the panel that determines those awards. These awards are non-political in nature. I would hope that he would retract his comments with respect to the Order of Canada.

As to the honourable senator's comments with respect to the future leader of the Liberal Party of Canada, the future leader will be well able to speak for him or herself following the election on November 14.

Finally, as to the position of the Government of Canada with respect to the NAFTA rules that may have been violated, I do not have that answer, and I will take the honourable senator's question as notice.

THE CABINET

ACCEPTANCE OF INVITATIONS FROM IRVING COMPANY

Hon. Marjory LeBreton: Honourable senators, my question is for the Leader of the Government in the Senate. It would appear that we are in the midst of serial confessions by Ministers of the Crown. I am starting to wonder whether the Prime Minister has held, or has ever considered holding, cabinet meetings at the Irving fishing lodge?

Rather than drag the process out until the middle of December, when we are scheduled to break for the holidays, can the Leader of the Government in the Senate provide us with a list of all of the ministers who have taken a trip to the Irving fishing lodge in the last 10 years, or, in the alternative — which appears to be a shorter list — those who have not taken such a trip?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, let me begin by saying that I have never taken such a trip. As to how many others may have, one must recognize that the Irvings have friendships with many Canadians on both sides of this chamber. The Irvings have run a long-established company within the Province of New Brunswick. As a result, they know many people who sit on both sides of this chamber.

One must carefully separate when one does something with a friend, from when one does something for so-called other reasons, to which I believe the honourable senator is alluding.

BUSINESS OF THE SENATE

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, while I am on my feet, Senator Ferretti Barth is now sitting up and has regained consciousness. She has been transported to hospital.

THE ENVIRONMENT

ACCEPTANCE BY MINISTER OF INVITATION TO VISIT IRVING CAMP

Hon. Marjory LeBreton: Honourable senators, the Minister of the Environment has announced that he reimbursed the Irving family \$1,500 to cover the cost of the trip and accommodation at the company's fishing lodge. The Ethics Counsellor — surprise, surprise — has cleared the Minister of the Environment of any wrongdoing because "He was not a guest of the Irvings; rather, he was a guest of former Governor General Romeo LeBlanc," who is also a former Speaker in this chamber. Will the Leader of the Government in the Senate tell us why Minister Anderson would repay the Irvings if he was a guest of Romeo LeBlanc?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I assume that the Minister of the Environment repaid the Irvings because the Irvings own the lodge.

TRANSPORT

AVIATION REGULATIONS—PAYMENTS BY VISITORS TO IRVING COMPANY FOR FLIGHTS ACCEPTED

Hon. Marjory LeBreton: Honourable senators, Ministers Bradshaw and Anderson have written cheques to pay for their "Air Irving" flights, but Richard Gage of the Canadian Business Aviation Association says that Irving jets operate under section 604 of Canadian air regulations, which prohibit owners from charging a fare to passengers not affiliated with company business. Mr. Gage has said that there is no legal way for ministers to compensate the Irvings for the flights.

Will the Leader of the Government in the Senate tell us whether, in addition to placing themselves in a position of apparent conflict of interest, ministers have now broken Canadian aviation regulations by paying the Irvings for their flights?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, all I can tell the honourable senator is that in the case of Ministers Anderson and Bradshaw, they were following the advice of the Ethics Counsellor.

Senator Lynch-Staunton: That is the problem.

THE CABINET

ACCEPTANCE OF INVITATIONS FROM IRVING COMPANY

Hon. Marjory LeBreton: The Ethics Counsellor has said that there was no conflict. This is like *Alice in Wonderland*: It gets "curiouser and curiouser."

It appears that the Irving fishing lodge was fully booked from August 15 to 17, 2001. We now know that the Minister of the Environment, the Minister of Fisheries, the former Governor General, the Member of Parliament for Beauséjour—Petitcodiac, Sasha Trudeau and Ottawa lobbyist Paul Zed were all in attendance discussing forestry and fisheries issues and the future of the Halifax shipyards.

Will the Leader of the Government first confirm that no other cabinet minister or Liberal member of Parliament was in attendance at the Irving camp from August 15-17, 2001?

• (1430)

Second, can the minister confirm that none of these ministers subsequently made representations to other cabinet ministers about issues that were discussed that weekend?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I do not know who else was at what appeared to be a private party among friends, a private party such as takes place on a fairly regular basis throughout this country on summer and winter weekends.

As to representations by these ministers, to the best of my knowledge, there were none.

NATIONAL DEFENCE

REDUCTION OF SOVEREIGNTY PATROLS BY AURORA AIRCRAFT—POSSIBLE USAGE OF IRVING COMPANY AIRCRAFT

Hon. Terry Stratton: Honourable senators, the Canadian navy has seen a 54 per cent reduction in the number of Aurora flying hours over the last decade. The navy has stated that to resolve the Aurora problem, it is considering hiring private companies to conduct air sovereignty patrols along Canada's East and West Coasts.

As honourable senators are well aware, it seems that the Irving Oil company has been generously providing free flights to any government minister that asks for them. Will the government consider asking the Irving Oil company to include sovereignty patrols along Canada's East and West Coasts, or is it too far out of the flight path to the fishing lodge?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, would the honourable senator like me to take his suggestion forward to members of the cabinet?

Senator Stratton: Of course.

THE ENVIRONMENT

REPORT OF COMMISSIONER OF THE ENVIRONMENT AND SUSTAINABLE DEVELOPMENT— EVALUATION OF PESTICIDES

Hon. Mira Spivak: Honourable senators, like Clark Kent and Superman, my dear colleague Senator Angus has always been a raging environmentalist masquerading under the persona of a financial titan.

The Commissioner of the Environment and Sustainable Development is a very down-to-earth, practical and strong-minded woman. When she produces a shocking report on toxics, we can conclude that it is based on sound evidence.

She said, among other things, that of 405 active ingredients used in thousands of commercial pesticide products that are supposed to be evaluated by 2006, only 1.5 per cent have been evaluated against current health and environmental standards.

Could the Leader of the Government give us an indication of what response the government has decided to make to deal urgently with this matter that affects the health and environment of the whole country?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, Environment Canada is investing \$7 million of new funds over the next five years dedicated to a nationally coordinated departmental science program to improve our understanding of the environmental presence and effects of priority pesticides in Canada. This program has just been undertaken.

The honourable senator is quite correct, as she always is, in indicating that we have only a certain amount of time to do these tests. They have been lagging. It is hoped that with the new regulations, legislation and money we can now step this up to a much higher level.

Senator Spivak: Honourable senators, the commissioner has said that the processes we observe seem to defy timely, decisive and precautionary action. She said that new pesticides are not fully evaluated; that 58 per cent of new pesticides are temporarily registered, even though some of the information needed is missing; that new and possibly safer products are not getting to users as fast as they should; that information on compliance is lacking and that information on the use and impacts of pesticides is still missing.

This is a tall order. Although I know it is impossible at the moment, could the Leader of the Government in the Senate commit to providing us not only with a detailed response but also with a full accounting of staff and budgetary resources dedicated to reducing our toxic substances problem?

Senator Carstairs: Honourable senators, as the honourable senator knows, a newly created, centrally administered pesticide science fund is now operational. Accepting the comments of the environment commissioner that we need to get on with it, the government hopes that this new fund can be used to bolster our knowledge and expertise in these fields.

FOREIGN AFFAIRS

AFRICA—GOVERNMENT CONTRIBUTION TO COMBAT HIV/AIDS

Hon. Donald H. Oliver: Honourable senators, my question today is about AIDS in Africa, a problem in pressing need of resolution.

Media reports have claimed that the federal government's initiative to provide inexpensive AIDS drugs to poor African countries has hit some roadblocks due to difficulty in drafting the legislation and due to time constraints created by the government's supposed intention to shut down Parliament within two weeks.

Mr. Stephen Lewis, the United Nations Special Envoy for AIDS in Africa, has urged the federal government in Canada not to give up on crafting this legislation, saying:

People everywhere are counting on Canada moving on this.

When will this bill be introduced? Could the Leader of the Government in the Senate assure us that this particular initiative will not be shelved or lost due to its complexity or due to circumstances surrounding the Liberal leadership change?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as the honourable senator knows, the Government of Canada fully supports the agreement reached by the World Trade Organization. We are moving as quickly as possible to allow poor countries better access to the medicines needed to respond to what he and I know is a grave public crisis.

It appears that Canada would be the first country willing to take action to implement this decision. Therefore, it must take time to develop the best possible way to implement the agreement.

Having said that, we are moving quickly, but we are also moving carefully.

Senator Oliver: Honourable senators, can the minister tell us whether legislation is being drafted that will help provide the inexpensive drugs that have been promised to the African countries suffering from AIDS, and can we expect that legislation this week or next week?

Senator Carstairs: Honourable senators, I know that the legislation is being drafted. I do not know when we can expect it. However, I am hoping, as the honourable senator is hoping, that it comes quickly.

INTERNATIONAL TRADE

UNITED STATES— RENEWAL OF SOFTWOOD LUMBER AGREEMENT

Hon. Gerry St. Germain: Honourable senators, my question is directed to the Leader of the Government in the Senate. Last week, top officials from the Bush administration and B.C. Premier Gordon Campbell expressed hope that a deal to end the softwood lumber dispute with the United States could be reached within weeks. This coincided with a meeting on October 22 between Doug Waddell, Canada's top lumber negotiator, and U.S. Commerce Undersecretary Grant Aldonas.

Could the Leader of the Government in the Senate comment on whether her government shares the optimistic sentiments of the B.C. premier with respect to the likelihood of a deal being reached on softwood lumber?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the Government of Canada is committed to developing a long-term policy-based solution to the softwood lumber dispute with the United States. In July, there was an interim agreement. That interim agreement was, unfortunately, unable to be concluded at that time.

Our negotiators continue their efforts toward finding that long-term solution. However, based on the demands of the United States' lumber industry, and not the American government, it is not clear whether this will be possible in the immediate future.

• (1440)

Senator St. Germain: This latest dispute with the United States has cost thousands of jobs in British Columbia and right across the country and in excess of \$1.5 billion to the lumber producers. This has been a huge burden for over 80,000 Canadians who are normally employed in sawmills and roughly 300 communities that are dependant on the forestry sector. The two-year-old forestry dispute is hampered by both this government's lack of effectiveness on international trade matters and a paralysing wait-and-see approach that it has taken.

Could the Leader of the Government in the Senate please comment on how high a priority she believes the future leader of the Liberal Party, Paul Martin, will give this matter and whether it will be a priority of that administration? Under the present administration, virtual silence has fallen on the issue.

Senator Carstairs: Honourable senators, there has not been silence on the part of this government. I cannot speak for the future administration, as I suspect I will not be a part of that administration. The honourable senator will have to find an individual who will be part of that administration.

Senator Prud'homme: Who would that be?

HEALTH

ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT— REPORT ON DOCTOR-PATIENT RATIOS OF COUNTRIES

Hon. Wilbert J. Keon: Honourable senators, I have a question for the Leader of the Government in the Senate. A new report from the Organization of Economic Co-operation and Development has ranked Canada as having one of the lowest ratios of doctors to population in the Western World. OECD figures show that in 2001 Canada had 2.1 physicians per every 1,000 residents. The only countries that had a lower ratio were Mexico, Korea and Turkey. The report also found that from 1980 to 1992, Canada's doctor-to-patient ratio rose from 1.8 to 2.2, but since 1993 it has remained stagnant. These numbers tell Canadians what they have already known for a long time: It is becoming more and more difficult to find a doctor.

Our Senate committee, in its recent report, recommended a solution to this problem. Can the federal government do anything to accelerate the recommendations of our committee to overcome this situation?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, medical colleges are within the purview of the provinces. I think we made a serious mistake, and I think honourable senator's committee recognized that serious mistake, in actually cutting back on the entry of medical school students. Many of the medical schools have now increased the number of students at the undergraduate level, but, as the honourable senator knows better than most, it takes a number of years before those physicians actually practise medicine, not just the four years of medical school, but then the internship, residency and additional training that they need.

The federal government has put dollars on the table for health care transition funds, part of which are directed toward skilled workers in the field of health care. In addition, we know that the problem of accreditation for foreign-trained doctors is moving slowly, but it seems to be moving for the first time.

I hope that Canadian colleges, as well as the College of Physicians and Surgeons and the academic communities, can work together to ensure that when we have doctors who could be easily qualified in a relatively short period of time, we open internship positions so that they can practise medicine.

PHYSICIAN GRADUATION—SUFFICIENT POSITIONS FOR INTERN-RESIDENT TRAINING

Hon. Wilbert J. Keon: Honourable senators, the minister has raised the question of accreditation of foreign doctors. I was hoping that we could also see some real progress in that area. It is moving very slowly.

Another area concerns me, although I do not yet have all my facts, which I will draw to the minister's attention within the next few days when I receive them. I believe there will be an announcement within the next week or so indicating that medical school graduates this year will not have available to them enough positions for intern and resident training. This surely would be a terrible predicament because they will go south to train and they will stay there.

Given what will happen in our country at the federal level in the next few months, it would be a worthwhile undertaking if some intervention could be made by the federal government to pull the provinces together to address this issue now. Does the Leader of the Government think that is possible?

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for his question. He raises a situation that is actually beyond the current medical school students because if we do not have enough intern and residence positions for graduates, then we certainly do not have them for trained immigrant doctors in our community.

I will take the honourable senator's concern forward to the Minister of Health. I will ask her to look at the transition funding, particularly with respect to physician education and other health care educator positions, to see if we cannot prod and probe a little harder to get the provinces to respond.

TRANSPORT

REROUTING OF EL AL FLIGHTS RESULTING FROM TERRORIST THREATS

Hon. J. Michael Forrestall: Honourable senators, can the Leader of the Government in the Senate tell this chamber what she knows or what she may have learned in the last day or two of the recent threat to attack an El Al airplane as it approached Canada's Pearson International Airport in Toronto?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I do not have much more detail than you, other than to say that apparently the threat originated in Canada. B'nai Brith, for one, has now called for greater surveillance. In response to that call, and on its own initiative, the Government of Canada is examining the situation.

Senator Forrestall: The government has repeatedly indicated that there is no al-Qaeda presence in Canada. As the leader might well know, there have been references and news reports to the fact that the threat was, as she has indicated, made by al-Qaeda. Could the minister clarify for us whether this threat was made

from a telephone link in Canada, and does the minister have any knowledge as to whether a cell phone or a pay phone might have been used?

Senator Carstairs: As the honourable senator undoubtedly understands, this is a matter of some security. I will obtain for him everything I can, but I think the honourable senator would respect the fact that some of this information simply may not be available in a public venue.

SOLICITOR GENERAL

PRESENCE OF AL-QAEDA IN COUNTRY

Hon. J. Michael Forrestall: As a final supplementary question, there are also reports of the seizure of a German-made rocket launcher entering Canada, along with 14 other weapons caches, between April 2001 and March 2003. Could the minister shed any light on this report, and could she tell the chamber whether the government has any reason to believe that al-Qaeda is present in Canada and armed to attack civilian airliners as they approach our busiest runways?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I do not have information on either one of the files that the honourable senator has asked me to comment on.

This weekend I read an article from the United States, interestingly enough, about the thought that they may now ban golf bags from airlines because, apparently, a golf bag is a place that could carry a rocket launcher. Officials are very concerned about the transportation of such a weapon.

• (1450)

However, I will take the particular issues that the honourable senator raises as notice.

FOREIGN AFFAIRS

UNITED NATIONS GENERAL ASSEMBLY RESOLUTION ON NUCLEAR NON-PROLIFERATION

Hon. Douglas Roche: Honourable senators, I have a question for the Leader of the Government in the Senate. An extremely important resolution is approaching a vote this week at the First Committee of the United Nations General Assembly. Introduced by the New Agenda Coalition, this omnibus resolution, "Towards A Nuclear-Weapon-Free World: A New Agenda" is based on the final document of the 2000 Nuclear Non-Proliferation Treaty Review Conference, where all parties unanimously agreed to advance the nuclear disarmament agenda by means of 13 practical steps. The drafters of the resolution have taken into account Canada's concerns. Important groups such as the Middle Powers Initiative, Project Ploughshares, Canadian Pugwash and Physicians for Global Survival endorse the resolution.

Will the minister undertake to contact Foreign Affairs Minister Graham immediately to urge him to have Canada vote "yes" for this resolution, bearing in mind that the vote may happen as soon as Thursday of this week?

Hon. Sharon Carstairs (Leader of the Government): I can assure the honourable senator that I will take his message forward before Thursday. I will do so later this afternoon so that the minister is aware of the wishes of the honourable senator.

Senator Roche: Honourable senators, Canada voted "yes" on a similar resolution introduced by the New Agenda Coalition at the UN General Assembly last year and was the only NATO state to do so. The example that Canada set last year must be maintained to give credence to Minister Graham's statements that the nuclear disarmament agenda is a high priority for Canada. I am pleased that the honourable leader has said that she would take this representation forward this afternoon because this vote may happen as soon as Thursday. I would ask the honourable leader if she could confirm with me, at her earliest opportunity, that Canada would vote "yes"?

Senator Carstairs: Honourable senators, if the vote will be on Thursday, you will probably learn at the same time as I how the Government of Canada has cast its vote.

I can only assure the honourable senator that I will take his representations forward.

[Translation]

DELAYED RESPONSES TO ORAL QUESTIONS

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table, in this House, a delayed response to an oral question raised by Senator Kinsella on October 8, 2003, concerning the viability of the navy's equipment, and a delayed response to an oral question raised by Senator Comeau on September 30, 2003, concerning the inquiry form used by parliamentarians.

NATIONAL DEFENCE

DEPLOYMENT OF HMCS *TORONTO*— TRANSFER OF EQUIPMENT FROM OTHER FRIGATES

(Response to question raised by Hon. Noël A. Kinsella on October 8, 2003)

The Government and the Canadian Forces recognize the burden that has been placed on the members of the Forces in the Campaign Against Terrorism, including the Navy.

With ongoing improvements in the security environment, we are able to progressively draw down our commitment to the Campaign Against Terrorism and we are now able to stagger our naval deployments.

Certain pieces of equipment are only used for ships on specific missions, such as the Campaign Against Terrorism. These pieces of equipment can be moved from ship to ship as required.

If a piece of standard equipment on a ship is inoperable and replacement equipment is not available from the supply chain it may be transferred from a ship with a lower operational requirement.

FISHERIES AND OCEANS

REQUIREMENT OF PUBLIC SERVANTS TO REPORT ON MEETINGS WITH SENATORS AND MEMBERS OF PARLIAMENT

(Response to question raised by Hon. Gerald J. Comeau on September 30, 2003)

The inquiry form is a tool to ensure that parliamentarians receive complete and timely answers to their questions and to keep parliamentarians, the Minister and departmental officials apprised of issues of concern to parliamentarians.

In our system of government, the Minister is responsible for the activities of his or her department and is accountable to Parliament for these activities. Accordingly, it is appropriate and important that Ministers are aware of communications taking place between their officials and parliamentarians.

Parliamentarians routinely request information from departmental officials across government, and Department of Fisheries and Oceans (DFO) officials strive to provide complete and accurate answers to factual questions in their areas of expertise. The inquiry form serves to ensure that answers to parliamentarians by these officials are being provided in a full, accurate and timely manner. The form also ensures that when parliamentarians raise such answers with the Minister he is able to respond quickly and effectively to their concerns. That said, given the concerns expressed by Senator Comeau and others, DFO officials are reviewing the text of the inquiry form to ensure that its application is clear and that it meets its intended purposes.

[English]

BUSINESS OF THE SENATE

POINT OF ORDER—DEBATE SUSPENDED

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, before the calling of Orders of the Day, I have a point of order to raise in respect of procedure. During Routine Proceedings, His Honour called Presentation of Reports from Standing or Special Committees. Senator Day, as a member of the Standing Senate Committee on National Security and Defence, rose and asked for leave to revert to the item to table some reports. Leave was denied yet he proceeded, as can be done under this rubric, to table one or two reports from the committee.

Tradition, both in committee and in this chamber — a convention, because it is an unwritten rule — states that when the chair is absent from either the committee or the chamber, then the deputy chair takes over his or her responsibilities. If the deputy chair is absent from either the committee or the chamber, then a member from the committee is designated to act on behalf of the chair.

In this instance, Senator Day rose, as Senator Forrestall, Deputy Chair of the Standing Senate Committee on National Security and Defence, was in the chamber at that time. Thus, the point of order is that it was highly irregular and it broke convention, which is to say an unwritten rule, for a member of a committee to do anything on behalf of the committee when the deputy chair was also present.

I would suggest that the tabling of the report was irregular, and should be withdrawn and then tabled by an authorized member of the committee in the absence of the chair and deputy chair. In this case, the deputy chair, who was in the room at the time that Senator Day tabled the report, should have tabled it instead.

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I believe we have already dealt with this issue of determining who has the authority to present a committee report to this chamber.

Although I cannot cite the page number, I know that the *Rules of the Senate* state clearly that the chair of a committee may delegate this task to a senator and that senator may present the report in the Senate. This issue was raised some time ago. I will agree that it might be a good idea that, when the chair or deputy chair of the committee is absent, this would be the practice, but if the deputy chair is present, he or she could do it. The rules, however, permit the chair to delegate the task of presenting the report to another senator.

Senator Lynch-Staunton: Honourable senators, in the instance just mentioned by Senator Robichaud, both the chair and the deputy chair were absent. In the case at hand, the deputy chair was present. The rules state that in the absence of both, the authority is delegated to a member designated by the chair or deputy chair. In the matter at hand, the rules do not apply because the deputy chair was present.

[English]

Hon. Joseph A. Day: Honourable senators, I made the request to return to Daily Routine of Business. I know that Senator Kenny and committee members approved the report but did not have the copies ready immediately and that they would be ready later.

Honourable senators, rule 97(1) of the *Rules of the Senate* states:

A report from a select committee shall be presented by the chairman of the committee or by a Senator designated by the chairman.

[Senator Lynch-Staunton]

That is the rule, and the chair of the committee designated me. The Leader of the Opposition in the Senate is urging upon you an unwritten rule to vary a written rule.

Hon. Terry Stratton: Honourable senators, I should like to ask a question of the honourable senator. This place is known for its tradition and customs and not for its ignoring of plain old courtesy. We generally comply with the fact that if the chair is not available to represent a report, then the deputy chair is automatically asked to do so, out of politeness. It goes to the collegiality of committees in that we put aside political differences in many instances to work together. Ignoring the opposition and simply going to someone on the government side to present a report is counter to what we try to accomplish in this chamber. I wonder why the honourable senator did this? I have to ask that fundamental question.

The Hon. the Speaker: Honourable senators, it being 3 p.m., pursuant to the order adopted by the Senate on October 27, 2003, it is my duty to interrupt the proceedings for the purpose of putting the deferred vote on the motion in amendment of the Honourable Senator Lynch-Staunton.

Pursuant to agreement, the bell to call in the senators will be sounded for 30 minutes.

Debate suspended.

• (1530)

The sitting of the Senate resumed

PUBLIC SERVICE MODERNIZATION BILL

THIRD READING— MOTION IN AMENDMENT NEGATIVED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts.

On the motion in amendment of the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Kelleher, P.C., that the Bill be not now read a third time but that it be amended in clause 230, on page 249, in the French version,

(a) by replacing line 32 with the following:

“saire, commissaire délégué et employés de”; and

(b) by replacing line 34 with the following:

“les commissaire et commissaire délégué sont”.

Motion in amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	LeBreton
Atkins	Lynch-Staunton
Beaudoin	Meighen
Buchanan	Nolin
Cochrane	Oliver
Comeau	Prud'homme
Doody	Rivest
Eyton	Robertson
Forrestall	Roche
Gustafson	Spivak
Johnson	St. Germain
Kelleher	Stratton
Keon	Tkachuk—27
Kinsella	

NAYS
THE HONOURABLE SENATORS

Adams	Kenny
Bacon	Kroft
Banks	LaPierre
Biron	Lapointe
Bryden	Lavigne
Callbeck	Léger
Carstairs	Losier-Cool
Chaput	Maheu
Cook	Mahovlich
Cools	Massicotte
Corbin	Merchant
Cordy	Milne
Day	Morin
De Bané	Pearson
Downe	Pépin
Fairbairn	Phalen
Finnerty	Poulin
Fraser	Poy
Furey	Ringuette
Gauthier	Robichaud
Gill	Rompkey
Grafstein	Smith
Graham	Sparrow
Harb	Stollery
Hervieux-Payette	Trenholme Counsell
Hubley	Watt
Jaffer	Wiebe—55
Joyal	

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

BUSINESS OF THE SENATE

POINT OF ORDER WITHDRAWN

The Hon. the Speaker: Honourable senators, we now return to the point of order.

Hon. Terry Stratton: Honourable senators, is the Honourable Senator Day aware of the custom and practice that if the committee chair is not available, the deputy chair tables the report? If so, why would he ignore the convention?

The Hon. the Speaker: Honourable senators, interventions are made on points of order. There is not an opportunity to put questions. I will see senators as they rise.

Hon. J. Michael Forrestall: Honourable senators, I had a conversation subsequent to the incident, which disturbed me somewhat. I have had a conversation with the chair of the committee and find that the error was inadvertent. Under other circumstances, it would not have happened.

I appreciate the point of order being raised, but I have accepted Senator Kenny's explanation. I think that should be the end of it.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I wish to place on the record rule 97(1), which clearly states:

A report from a select committee shall be presented by the chairman of the committee or by a Senator designated by the chairman.

The chair is well within his or her right to do that. Having said that, I think it is a good idea, whenever possible, that if the chair is not able to present the report, the deputy chair present the report.

I have put that suggestion on the record previously. I would hope that honourable senators on both sides of the chamber, because we have chairs on both sides of the chamber, would try to do that whenever possible.

Hon. Colin Kenny: Honourable senators, I think that it is appropriate for me to first apologize and to express my respect for the honourable deputy chair of the committee. I assure him that no disrespect was intended in this circumstance.

I do apologize, Senator Forrestall. I appreciate your comments.

The Hon. the Speaker: The point of order has been made.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I am pleased to withdraw my point of order. I think the point was made.

[Translation]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I would like to begin with Item No. 2 under Government Business, namely Bill C-25, and then return to the order proposed in the Order Paper.

• (1540)

[English]

PUBLIC SERVICE MODERNIZATION BILL

THIRD READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I rise to participate in the debate on Bill C-25. In my speech, I will present a motion in amendment dealing with the matter of whistle-blowing. I will ask that my amendment, which has been prepared in both official languages, be circulated to honourable senators.

Honourable senators, this chamber has been doing serious work —

The Hon. the Speaker: Honourable senators, I am sorry to interrupt but the chamber is rather noisy. I would ask honourable senators to come to order. If you must have a conversation, please carry it on outside the chamber.

Senator Kinsella: Honourable senators, as I tell my students, you better not only listen, but take notes, because there will be a test afterwards.

Honourable senators, I want to compliment all members of the house for the hard work at third reading stage and at committee stage that has gone into the examination of Bill C-25. The in-depth work that was done in committee has been referred to already. A number of motions and amendments were brought forward in committee, and a number of amendments have been brought forward here at third reading.

Honourable senators will recognize that all of the amendments that have been brought forward have spoken to discrete and different issues related to the bill. It was necessary to deal with different amendments on these different issues because the bill does cover a wide range of matters relating to the government's proposal to modernize the public service.

We have just rejected an amendment proposed by my colleague Senator Lynch-Staunton. We will try to understand why it was rejected given the fact that it is the very same content that is contained in Bill C-41, which is on our Order Paper. I am having a hard time understanding how the government quarters have rejected that, when it was an amendment to Bill C-25 precisely.

At any rate, I wish to focus on the matter of whistle-blowing. In doing so, once again, I wish to bring to the attention of honourable senators a copy of a letter dated June 16, 1993, from Prime Minister Chrétien. It was a letter addressed to Mr. Daryl Bean, and I will quote it for you. This is what the Prime Minister promised when he was the Leader of the Opposition: "A Liberal government would introduce whistle-blowing legislation in the next Parliament." The letter was dated and signed June 11, 1993. There have been many Parliaments since then, and this written letter — this written guarantee — has not been honoured.

Yesterday, we heard from our colleague Senator Gauthier that he had correspondence with the same Prime Minister. The correspondence that has been tabled between the Prime Minister and Senator Gauthier says that we do not have to worry about official languages and we do not have to worry about the tribunal that is proposed by Bill C-25 — there is no guarantee that the proceedings before that tribunal will be in both official languages in the statute. However, Senator Gauthier says — and we concede, if you read the letter from the Prime Minister — that the Prime Minister is saying in his letter, "Well, yes, we should do that. Do not worry about it."

Well, I have a letter and Senator Gauthier has a letter. My letter guaranteed from Mr. Chrétien that there would be whistle-blowing legislation introduced in the Parliament way back in 1993. That has not happened. Surely they cannot argue that they did not have enough time to do it — it has been 10 years.

Honourable senators, I am not comfortable with this letter in terms of relying on any guarantee for the protection of official languages. There are textual errors in the bill itself in terms of language. We raised those in committee, but the other side has ignored those issues as well. One wonders whether or not we are taking our work seriously in terms of reviewing legislation to improve it and correcting errors when we find them.

The government itself found an error in the bill; thus, Bill C-41 was introduced. We attempted to correct that, which the government side has just rejected.

The government side also promised action in 1993 in one of their policy documents. In the section entitled "The Liberal Approach to the Public Service," this is what they said to the Canadian public: "Whistle-blowing legislation. Public servants who blow the whistle on illegal or unethical behaviour should be protected. A Liberal government will introduce whistle-blowing legislation in the first session of a new Parliament."

They did not do that either, honourable senators. However, I suppose many of us would say that promise pales in comparison with the promise to remove the GST.

Honourable senators, whether this government likes it or not, the fact of the matter is that Canadians want a public service that is ethical, value-based, effective and efficient in the complex world of the 21st of the century — a world in which questions of conscience face men and women in the public and private sectors far more frequently than they did in the days when most of us first entered the workforce.

We have just learned of far too many cases of public servants having to place their careers and the support of their families on the line because they learn of some wrongdoing — either immoral, unethical or outright illegal — and if they blow the whistle, their career progress is placed in jeopardy tremendously.

As recently as last spring, a committee of the other place was able to apprehend very serious problems in the Office of the Privacy Commissioner. The testimony is that had there been protection against retaliation — because this is what it is really all about — the scandal brought forward in that agency would have been obviated.

Honourable senators, I think there is no question. This chamber has already pronounced itself on the principle of having whistle-blowing legislation. The reason a whistle-blowing amendment is appropriate to this bill is that although the other place did amend the bill to add a section dealing with whistle-blowing, it was a Mickey Mouse type of revision that did nothing. If the bill which now speaks of mechanisms dealing with whistle-blowing is to be serious, this is the opportunity for us to give it the level of seriousness and a method — a piece of machinery — that would be effective in both protecting the public servant, in being able to bring forward in the public interest instances of immoral, unethical or illegal activity, and to do so with the protection that he or she would not be victimized by retaliation.

• (1550)

Before concluding, honourable senators, I point out by way of summary that the motion I am about to move is to give legislative expression to what Canadians are asking for. As late as this morning, a public opinion poll done by Ipsos Reid was released. It concerned whether or not Canadians want protection for whistle-blowers in government. An overwhelming majority of Canadians agree that the government should bring in new laws so that whistle-blowers on government wrongdoings are protected from any reprisals. Clearly, Canadians have spoken loudly and

forcibly on this issue. They are demanding that Parliament see to it that there be a fulfilment of what the present government promised a long time ago, and pass a law that will protect workers when they denounce government wrongdoings.

Honourable senators, the survey indicates that 89 per cent of Canadians expect the government to bring in legislation so that public sector workers who expose government wrongdoing will be protected from any reprisals.

MOTION IN AMENDMENT

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I move, seconded by the Honourable Senator Stratton:

That Bill C-25 be not now read a third time but that it be amended

(a) in clause 2

(i) on page 8, by replacing lines 27 to 32 with the following:

"include, among other things, harassment in the workplace.", and

(ii) on page 99, by adding after line 8, the following:

"PART 2.1

PROTECTION OF WHISTLEBLOWERS

Definitions

238.1 The following definitions apply in this Part.

"Commissioner" means the commissioner of the Public Service Commission who has been designated as Public Interest Commissioner under section 238.3.

"employee" has the same meaning as in Part 2.

"law in force in Canada" means a provision of an Act of Parliament or of the legislature of a province or an instrument issued under the authority of such an Act that is in force at the relevant time.

"minister" means a member of the Queen's Privy Council for Canada who holds office as a minister of the Crown.

"wrongful act or omission" means an act or omission that is:

(a) an offence against a law in force in Canada;

(b) likely to cause a significant waste of public money;

(c) likely to endanger public health or safety or the environment;

(d) a significant breach of an established public policy or of a directive in the written record of the public service; or

(e) one of gross mismanagement or an abuse of authority.

Purpose

Purpose

238.2 The purpose of this Part is

(a) to provide for the education of persons working in the public service on ethical practices in the workplace and the promotion of the observance of these practices;

(b) to protect the public interest by providing a means for employees of the public service to make allegations, in confidence, of wrongful acts or omissions in the workplace, to an independent Commissioner who will investigate them and seek to have the situation dealt with, and who will report to Parliament in respect of problems that are confirmed but have not been dealt with; and

(c) to protect employees of the public service from retaliation for having made or for proposing to make, in good faith and on the basis of reasonable belief, allegations of wrongdoing in the workplace.

Public Interest Commissioner

Designation

238.3.(1) The Governor in Council shall designate one of the commissioners of the Public Service Commission to serve as Public Interest Commissioner.

Part of role of Commission

(2) The role of Public Interest Commissioner is a part of the function of the Public Service Commission.

Powers

(3) The Commissioner may exercise the powers of office of a commissioner of the Public Service Commission for the purposes of this Part.

Information made public

238.4 (1) Subject to section 238.9, the Commissioner may make public any information that comes to the attention of the Commissioner as a result of the performance or exercise of the Commissioner's duties or powers under this Part if, in the Commissioner's opinion, it is in the public interest to do so.

Disclosure of necessary information

(2) The Commissioner may disclose, or may authorize any person acting on behalf or under the direction of the Commissioner to disclose, information that, in the Commissioner's opinion, is necessary to

(a) conduct an investigation under this Part; or

(b) establish the grounds for findings or recommendations contained in any report made under this Part.

Disclosure in the course of proceedings

(3) The Commissioner may disclose, or may authorize any person acting on behalf or under the direction of the Commissioner to disclose, information necessary to assist

(a) a prosecution for an offence under section 238.20; or

(b) a prosecution for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made under this Part.

Disclosure of offence

(4) The Commissioner may disclose to the Attorney General of Canada or of a province, as the case may be, information relating to the commission of an offence against any law in force in Canada that comes to the attention of the Commissioner as a result of the performance or exercise of the Commissioner's duties or powers under this Part if, in the Commissioner's opinion, there is evidence of an offence.

Not competent witness

238.5 The Commissioner or person acting on behalf or under the direction of the Commissioner is not a competent witness in respect of any matter that comes to their knowledge as a result of the performance or exercise of the Commissioner's duties or powers under this Part in any proceeding other than

(a) a prosecution for an offence under section 238.20; or

(b) a prosecution for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made under this Part.

Protection of Commissioner

238.6 (1) No criminal or civil proceedings lie against the Commissioner, or against any person acting on behalf or under the direction of the Commissioner, for anything done, reported or said in good faith as a result of the performance or exercise or purported performance or exercise of the Commissioner's duties or powers under this Part.

Libel or slander

(2) For the purposes of any law relating to libel or slander,

(a) anything said, any information supplied or any record or thing produced in good faith and on the basis of reasonable belief in the course of an investigation carried out by or on behalf of the Commissioner under this Part is privileged; and

(b) any report made in good faith by the Commissioner under this Part and any fair and accurate account of the report made in good faith for the purpose of news reporting is privileged.

Education

Dissemination

238.7 The Commissioner shall promote ethical practices in the public service and a positive environment for giving notice of wrongdoing, by disseminating knowledge of this Part and information about its purposes and processes and by such other means as seem fit to the Commissioner.

Notice of Wrongful Act or Omission

Notice by employee

238.8 (1) An employee who has reasonable grounds to believe that another person working for the public service or in the public service workplace has committed or intends to commit a wrongful act or omission

(a) may file with the Commissioner a written notice of allegation; and

(b) may request that their identity be kept confidential with respect to the notice.

Form and content

(2) A notice under subsection (1) shall identify

(a) the employee making the allegation, and be signed by that person;

(b) the person against whom the allegation is being made; and

(c) the grounds on which the employee believes that the act or omission is wrongful and has been or will be committed, giving the particulars that are known to the employee and the reasons and the grounds on which the employee believes the particulars to be true.

No breach of oath

(3) A notice by an employee to the Commissioner under subsection (1), given in good faith and on the basis of reasonable belief, is not a breach of any oath of office or loyalty or secrecy taken by the employee and, subject to subsection (4), is not a breach of duty.

Solicitor-client privilege

(4) No employee, in giving notice under subsection (1), may violate any law in force in Canada or rule of law protecting privileged communications as between solicitor and client, unless the employee has reasonable grounds to believe there is a significant threat to public health or safety.

Waiver

(5) An employee who has made a request under paragraph (1)(b) may waive the request or any resulting right to confidentiality, in writing, at any time.

Rejected notice

(6) Where the Commissioner is not able or willing to give an assurance of confidentiality in response to a request made under paragraph (1)(b), the Commissioner may reject the notice and take no further action on it, but shall keep it confidential.

Confidentiality

238.9 Subject to subsection 238.11(5) and any other obligation of the Commissioner under this Part or any law in force in Canada, the Commissioner shall keep confidential the identity of an employee who has filed a notice with the Commissioner under subsection 238.8(1) and to whom the Commissioner has given an assurance that, subject to this Part, their identity will be kept confidential.

Initial review

238.10 On receiving a notice under subsection 238.8(1), the Commissioner shall review it, may ask the employee for further information and may make such further inquiries as, in the opinion of the Commissioner, may be necessary.

Rejected notices

238.11 (1) The Commissioner shall reject and take no further action on a notice given under subsection 238.8(1), if the Commissioner makes a preliminary determination that the notice

- (a) is trivial, frivolous or vexatious;
- (b) fails to allege or give adequate particulars of a wrongful act or omission;
- (c) breaches subsection 238.8(4); or
- (d) was not given in good faith or on the basis of reasonable belief.

False statements

(2) The Commissioner may determine that a notice that contains a statement that the employee knew to be false or misleading at the time it was made was not given in good faith.

Mistaken facts

(3) The Commissioner shall not determine that a notice was not given in good faith for the sole reason that it contains mistaken facts unless the Commissioner has grounds to believe that there was adequate opportunity for the employee to discover the mistake.

Report

(4) Where the Commissioner has made a determination under subsection (1), the Commissioner shall, in writing and on a timely basis, advise the employee who gave notice under subsection 238.8(1) of that determination.

Report to official and minister

(5) Where the Commissioner determines under subsection (1) that a notice was given in breach of subsection 238.8(4) or was not given in good faith and on the basis of reasonable belief, the Commissioner may advise

- (a) the person against whom the allegation was made, and
- (b) the minister responsible for the employee who gave the notice of the matters alleged and the identity of the employee.

Valid notice

238.12 (1) The Commissioner shall accept a notice given under subsection 238.8(1) where the Commissioner determines that the notice

- (a) is not trivial, frivolous or vexatious;
- (b) alleges and gives adequate particulars of a wrongful act or omission;
- (c) does not breach subsection 238.8(4); and
- (d) was given in good faith and on the basis of reasonable belief.

Report to employee

(2) Where the Commissioner has made a determination under subsection (1), the Commissioner shall, in writing and on a timely basis, advise the employee who gave notice under subsection 238.8(1) of that determination.

Investigation and Report

Investigation

238.13 (1) The Commissioner shall investigate a notice accepted under section 238.12, and, subject to subsection (2), shall prepare a written report of the Commissioner's findings and recommendations.

Report not required

(2) The Commissioner is not required to prepare a report if satisfied that

- (a) the employee ought to first exhaust other procedures available to the employee;
- (b) the matter could more appropriately be dealt with, initially or completely, by means of a procedure provided for under a law in force in Canada other than this Part; or
- (c) the length of time that has elapsed between the time the wrongful act or omission that is the subject-matter of the notice occurred and the date when the notice was filed is such that a report would not serve a useful purpose.

Report to employee

(3) Where the Commissioner has made a determination under subsection (2), the Commissioner shall, in writing and on a timely basis, advise the employee who gave notice under subsection 238.8(1) of that determination.

Confidential information

(4) Information related to an investigation is confidential and shall not be disclosed, except in accordance with this Part.

Report to minister

(5) The Commissioner shall provide the minister responsible for the employee against whom an allegation has been made, on a timely basis and in no case later than one year after the Commissioner receives the notice, with a copy of the report made under subsection (1).

Minister's response

238.14 (1) A minister who receives a report under subsection 238.13(5) shall consider the matter and respond to the Commissioner.

Content of response

(2) The response of a minister under subsection (1) shall specify the action the minister has taken or proposes to take to deal with the Commissioner's report, or that the minister proposes to take no action.

Further responses

(3) A minister who, for the purposes of this section, specifies action proposed to be taken shall give such further responses as are requested by the Commissioner until such time as the minister advises that the matter has been dealt with.

Emergency public report

238.15 (1) The Commissioner may require the President of the Treasury Board to cause an emergency report prepared by the Commissioner to be laid before both Houses of Parliament on the next day that the House sits if, in the Commissioner's opinion, it is in the public interest to do so.

Content of report

(2) A report prepared by the Commissioner for the purposes of subsection (1) shall describe the substance of a report made to a minister under subsection 238.13(5) and the minister's response or lack thereof under section 238.14.

Annual report

238.16 (1) The Public Service Commission shall include in the annual report to Parliament made pursuant to section 23 of the *Public Service Employment Act* a statement of activity under this Act prepared by the Commissioner that includes

(a) a description of the Commissioner's activities under section 238.7;

(b) the number of notices received pursuant to section 238.8;

(c) the number of notices rejected pursuant to sections 238.8 and 238.11

(d) the number of notices accepted pursuant to section 238.12;

(e) the number of accepted notices that are still under investigation pursuant to subsection 238.13(1);

(f) the number of accepted notices that were reported to ministers pursuant to subsection 238.13(5);

(g) the number of reports to ministers pursuant to subsection 238.13(5) in respect of which action satisfactory to the Commissioner has been taken;

(h) the number of reports to ministers pursuant to subsection 238.13(5) in respect of which action satisfactory to the Commissioner has not been taken;

(i) an abstract of the substance of all reports to ministers pursuant to subsection 238.13(5) and the responses of ministers pursuant to section 238.14; and

(j) where the Commissioner is of the opinion that the public interest would be best served, the substance of an individual report made to a minister pursuant to subsection 238.13(5) and the response or lack thereof of a minister pursuant to section 238.14.

Annual report

(2) The Public Service Commission may include in the annual report to Parliament made pursuant to section 23 of the *Public Service Employment Act* an analysis of the administration and operation of this Part and any recommendations with respect to it.

Prohibitions

False information

238.17 (1) No person shall give false information to the Commissioner or to any person acting on behalf or under the direction of the Commissioner while the Commissioner or person is engaged in the performance or exercise of the Commissioner's duties or powers under this Part.

Bad faith

(2) No employee shall give a notice under subsection 238.8(1) in bad faith.

No disciplinary action

238.18 (1) No person shall take disciplinary action against an employee because

(a) the employee, acting in good faith and on the basis of reasonable belief, has disclosed or stated an intention to disclose to the Commissioner that a person working for the public service or in the public service workplace has committed or intends to commit a wrongful act or omission;

(b) the employee, acting in good faith and on the basis of reasonable belief, has refused or stated an intention to refuse to commit an act or omission the employee believes would be a wrongful act or omission under this Part;

(c) the employee, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done in order to comply with this Part; or

(d) the person believes that the employee will do anything referred to in paragraph (a), (b) or (c).

Definition

(2) In this section, "disciplinary action" means any action that adversely affects the employee or any term or condition of the employee's employment or adversely affects the employee's opportunity for future employment within or outside the public service, and includes:

- (a) harassment;
- (b) financial penalty;
- (c) affecting seniority;
- (d) suspension or dismissal;
- (e) denial of meaningful work or demotion;
- (f) denial of a benefit of employment;
- (g) refusing to give a reference; or
- (h) any other action that is disadvantageous to the employee.

Rebuttable presumption

(3) A person who takes disciplinary action against an employee within two years after the employee gives a notice to the Commissioner under subsection 238.8(1) shall be presumed, in the absence of a preponderance of evidence to the contrary, to have taken the disciplinary action against the employee contrary to subsection (1).

Disclosure prohibited

238.19 (1) Except as authorized by this Part or any other law in force in Canada, no person shall disclose to any other person the name of the employee who has given a notice under subsection 238.8(1) and has requested confidentiality under that subsection, or any other information the disclosure of which reveals the employee's identity, which may include the existence or nature of a notice, without the employee's consent.

Exception

(2) Subsection (1) does not apply where the notice was given in breach of subsection 238.8(4) or was not given in good faith and on the basis of reasonable belief.

Enforcement

Offences and punishment

238.20 A person who contravenes subsection 238.8(4), section 238.17, or subsection 238.18(1) or 238.19(1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000.

Employee Recourse

Recourse available

238.21 (1) An employee against whom disciplinary action is taken contrary to section 238.18 is entitled to use every recourse available to the employee under the law, including grievance proceedings provided for under an Act of Parliament or otherwise.

Recourse not lost

(2) An employee may seek recourse as described in subsection (1) whether or not proceedings based upon the same allegations of fact are or may be brought under section 238.20.

Benefit of presumption

(3) In any proceedings of a recourse referred to in subsection (1), the employee is entitled to the benefit of the presumption established in subsection 238.18(3).

Transitional

(4) Where grievance proceedings are current or pending on the coming into force of this Part, the proceedings shall be dealt with and disposed of as if this Part had not been enacted.; and

(b) in clause 8 on page 108,

(i) by striking out lines 13 to 20, and

(ii) by relettering paragraphs 11.1(1)(i) and 11.1(1)(j) as paragraphs 11.1(1)(h) and 11.1(1)(i) and any cross references thereto accordingly; and

(c) in clause 88 on page 193, by adding after line 17, the following:

"88.1 Schedule II to the Act is amended by adding the following in alphabetical order:

Public Service Labour Relations Act
section 238.9, subsection 238.13(4), section 238.19

Loi sur les relations de travail dans la fonction
publique
article 238.9, paragraphe 238.13(4), article 238.19.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. John G. Bryden: Honourable senators, would the Honourable Senator Kinsella undertake to answer a question?

Senator Kinsella: Yes.

Senator Bryden: At the beginning of his speech, the Honourable Senator Kinsella said, "As I tell my students, do not only listen, take notes..." Did the honourable senator mean to say "As I used to tell my students..."? The question is: Is the honourable senator still teaching?

Senator Kinsella: I try to do it every day in this place.

Senator Bryden: It is a legitimate question. Does the honourable senator have students currently?

Senator Kinsella: As I replied, I believe it was to Senator Prud'homme yesterday, in referring to Senator Robichaud, I said something like —

[Translation]

Once a minister, always a minister; once a professor, always a professor. When I speak to the Senate, I do so rather as if I were in front of a class at the seminary.

[English]

Senator Bryden: Is the honourable senator's answer that he is not currently teaching at any institution?

Senator LeBreton: What difference does that make?

Senator Bryden: He raised it. Is the honourable senator not teaching at any institution?

Senator Andreychuk: Invoke the provisions of the Privacy Act.

Senator Kinsella: As I replied in French, once a professor, always a professor. I consider that any time I rise in this place, I do so without divorcing myself from my orientation as a professor.

Senator Bryden: Is the honourable senator saying that he does not currently teach students at any university, this semester?

Senator Kinsella: Honourable senators, I participate in lectures at many universities across Canada, in the United States and in Europe. I had a wonderful opportunity not too long ago to give a lecture at the Pontifical Lateran University in the Vatican on the topic of human rights and international terrorism. There are many other opportunities that I have to teach, both in my own province at St. Thomas University and at the University of New Brunswick, where we were last week.

It is a little like saying to people in other professions, such as law or medicine, "Do you cease to be a lawyer or a doctor when you come to this place or any other place?" My answer is no.

Senator Bryden: What the honourable senator is saying is that he is not on the paid staff or on contract at St. Thomas University?

Senator Kinsella: I have been 40 years a professor at St. Thomas University. I continue to participate in the work of that university and several other universities across Canada.

• (1600)

Senator Bryden: The point of this line of questioning is that if you are on the paid staff or on paid contract at the university, and since, in particular, many of the universities in the Maritimes are largely funded by public funds, would that not be double-dipping?

Senator Kinsella: The answer is: absolutely not.

Hon. Gerald J. Comeau: Honourable senators, I am not sure if the honourable senator would ask me the same question. Last week I gave a course to public servants in Halifax. I do not know if that qualifies me as a teacher or a professor myself. However, I will leave that as a question for another time.

In the meantime, I ask for the adjournment.

The Hon. the Speaker: That is fine. If other senators wish to speak, our custom is to give them the opportunity to do so before I go to Senator Comeau to adjourn.

Hon. Tommy Banks: Honourable senators, am I able to ask a question of Senator Kinsella?

The Hon. the Speaker: There is no time left in Senator Kinsella's speaking time.

It is moved by the Honourable Senator Comeau, seconded by the Honourable Senator Cochrane, that further debate on this motion in amendment be adjourned to the next sitting of the Senate. Is it your pleasure, honourable senators, to adopt the motion?

Senator Robichaud: No.

The Hon. the Speaker: I hear some saying "no."

All those in favour of the motion will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed to the motion will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "yeas" have it.

On motion of Senator Comeau, debate adjourned.

CRIMINAL CODE

BILL TO AMEND—MESSAGE FROM COMMONS— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C.:

That, with respect to the House of Commons Message to the Senate dated September 29, 2003 regarding Bill C-10B:

(i) the Senate do not insist on its amendment numbered 2;

(ii) the Senate do not insist on its modified version of amendment numbered 3 to which the House of Commons disagreed;

(iii) the Senate do not insist on its modified version of amendment numbered 4, but it do concur in the amendment made by the House of Commons to amendment numbered 4; and

That a Message be sent to the House of Commons to acquaint that House accordingly.

Hon. Charlie Watt: Honourable senators, please bear with me. I might choose to go slowly on this one. I think it is important to have the thorough attention of senators here.

We have all heard the Chairman of the Standing Senate Committee on Legal and Constitutional Affairs outline his agreement with the other place, the House of Commons, to send this message back to the Senate and to not insist on any further amendment, but simply concur with the wishes of the House of Commons.

I think what needs to be said was said by the Chair of the committee. I participated in that committee. I have also heard from the Deputy Chair, Senator Beaudoin, outlining, again, in a similar fashion as the chairman, that he does not agree with what was brought over from the House of Commons.

What needs to be said was said. There is little I can do to add to it other than to speak to an area that I feel he did not adequately cover, or on which he did not have time to elaborate.

Honourable senators, allow me to address two events that are central to our debate on Bill C-10B. The message from the House of Commons dated September 29, 2003 marks the first event, but I also want to draw your attention to the hearing held by the Standing Senate Committee on Legal and Constitutional Affairs on June 12 last, when amendment 3 was adopted.

Last October 7, the committee chairman, Senator Furey, addressed the issue of harvesting rights with conviction and eloquence in this very chamber. In reference to the Aboriginal provision, or amendment 3, Senator Furey said this:

The addition of the clause recognizing the legitimacy of the traditional practice signals to judges that this category of activity has special significance...

He went on to say:

The second reason that the Aboriginal provision is necessary was a direct response to the expanded killing provision in proposed section 182.2(1) of the bill.

Indeed, Bill C-10B fails to distinguish between the killing of domestic animals and wildlife.

I thank Senator Furey for his essential contributions to our debate. For my part, I was both puzzled and disturbed by the message from the House of Commons. I was very puzzled, honourable senators, by what I read at line 27 on page two of the message, which states: "as causing unnecessary pain is not a crime." If causing unnecessary pain is not a crime, what is a crime for the House of Commons? Why are we even considering Bill C-10B? Ask yourselves that question.

I was puzzled and also very disturbed by different arguments in the message, such as: "There is no clarity as to what traditional practices are in the criminal law context." In other words, we do not know enough about traditional harvesting practices.

This is not true. We do know how to manage and conserve our wildlife. For example, the Nunavut Wildlife Board, where some members are appointed by the federal government, is recognized as "the principal instrument of wildlife management in the Nunavut Settlement Area."

In Nunavik, under chapter 24 of the James Bay and Northern Quebec Agreement, we have the Hunting, Fishing and Trapping Coordinating Committee. It is "an expert body made up of Native and government members, established to review, manage, and in certain cases, supervise and regulate the hunting, fishing and trapping regime."

The government, we should agree, does not know what it is doing. On the one hand, in Nunavik and Nunavut it recognizes the special importance of harvesting by Aboriginal peoples. On the other hand, there is no such recognition in the Criminal Code. That is the key area: the Criminal Code. We are not recognized in the Criminal Code. This is where we are asking for the amendment — namely, in the Criminal Code.

As I said in the introduction, honourable senators, to better understand the House of Commons message, we need to travel back to June 12, 2003, when Senator Furey chaired a hearing in the presence of the parliamentary secretary to the Minister of Justice. It was the view of the government that "a different standard" should not be applied for Aboriginal persons engaged in traditional harvesting practices. It was also the view of the government that "evolving social standards" took precedence over constitutional provisions.

Have you ever heard of that? I repeat: no different standard. I repeat: priority to evolving social standards. Honourable senators, I invite you to pause and ponder those words. They clearly reflect indifference on the part of the federal government towards Aboriginal peoples. There is no Aboriginal policy in government; rather, the policy is one of total damage control, obstruction, delay and evasion. My dear colleagues, we are dealing with a colonial system that is no longer acceptable in the year 2003.

Fortunately, on June 12 last, our colleague Senator Joyal forcefully reminded us of the 1990 decision of the Supreme Court of Canada in *Sparrow*. In that case, it was determined that, first, the general guiding principle for section 35 is that the government has the responsibility to act in a fiduciary capacity with respect to Aboriginal peoples.

• (1610)

Second, the honour of the Crown is at stake in dealing with the Aboriginal peoples. For example, can infringing legislation be justified?

Third, those standards might place a heavy burden on the Crown to limit infringement and provide for fair compensation.

Honourable senators, I invite you to ponder those standards. The honour of the Crown is at stake; our honour is at stake. This

legislation will have everlasting effects and consequences. I trust we will do the right thing.

During our debate, my colleagues and I have received many messages of support from Aboriginal leaders across the country. With the consent of honourable senators, I would like to table the messages of support for your consideration.

I ask honourable senators for consent to table those document.

The Hon. the Speaker: Honourable senators, is leave granted?

Hon. Senators: Agreed.

MOTION IN AMENDMENT

Hon. Charlie Watt: Therefore, honourable senators, pursuant to rule 59(2) of the *Rules of the Senate*, I move, seconded by the Honourable Senator Adams:

That the motion, together with the Message from the House of Commons dated September 29, 2003, regarding Bill C-10B, An Act to amend the Criminal Code (cruelty to animals), be referred to the Standing Senate Committee on Legal and Constitutional Affairs for consideration and report.

Hon. Gerald J. Comeau: Honourable senators, would the Honourable Senator Watt accept a question?

Senator Watt: Yes, I will.

Senator Comeau: I listened carefully to the speech of the Honourable Senator Watt. He referred in his comments to the land claims agreements of both the Nunavut and the Nunavik areas and how governments had negotiated agreements with these two areas. My question is: In those agreements, was there not some kind of arrangement that traditional harvest practices would continue to be honoured by the federal government, which signed the agreement with these two regions; that traditional harvest practices would continue, along with other practices such as having access to fishery resources off your coast, to try to increase access to those resources? Was the question of traditional harvesting practices not a part of the agreements that were signed?

Senator Watt: Honourable senators, it is true that during the deliberations between the Nunavik and Nunavut dealing with the Government of Canada, those items were honoured and implanted in the final agreement. More important, however, they also had constitutional protection.

I should distance myself from modern treaties such as that of Nunavut and Nunavik. They have a modern treaty agreement. The other Aboriginal groups in this country also have constitutional protection, even if they do not have a specific modern treaty in place at the moment. Therefore, the answer is: Yes, those agreements are recognized and affirmed, even under the Constitution.

Senator Comeau: In order that I understand, the James Bay Agreement, that referred to Nunavik, and the Nunavut Land Claims Agreement gave a double protection for the traditional wildlife harvest of these regions. Not only do you have protection under section 35, you have an added protection.

In this agreement, the honourable senator has spoken about fiduciary responsibility as well. That is another protection. I understand that the bill that you wish to refer back to committee would be further studied in committee to respond to the spirit of these agreements as well as the Constitution, is that correct?

Senator Watt: The Standing Senate Committee on Legal and Constitutional Affairs is knowledgeable in this area because they have dealt with these matters a number of times already with regard to what does and does not exist. The Standing Senate Committee on Legal and Constitutional Affairs is saying, on behalf of the Aboriginal peoples, that we will be protected if we are prosecuted for some reason down the road, perhaps by animal rights groups that make public reports down south. At times, they seem to have more ability to put pressure on various groups, especially the small ones. This is what we are worried about here. Absent the amendment that is needed in the Criminal Code, we would automatically become criminals if we are charged and we would not be able to defend ourselves because what is needed in the Criminal Code is not there for the Aboriginal people to rely upon. I hope that answers the honourable senator's question.

Senator Comeau: Many of us have forgotten what happened some years ago to the people of the North when well-meaning people at the time wanted to stop the seal harvest. I do not think these people realize the devastation that it cost the communities and the people involved when they broke an extremely important link in the chain that held these communities together. To this day, these communities have not yet recovered to the point where they were before.

The honourable senator seems to be warning us not to let this happen again. Let us be absolutely sure that what we are proposing to do with this bill will not cause the kind of harm that happened when well-intentioned people destroyed part of the livelihood of people in the North. Even today, people have yet to recover from that devastation.

Senator Watt: Honourable senators, we are still living through that devastation today. What makes us what we are, who we are and how we survive economically was basically wrenched from us, almost like pulling a rug out from under our feet. That happened in the past. We do not want to see that happen again.

There are not many economic opportunities available to the people in these communities, especially in the Arctic. I am sure that the same thing applies in the south for Aboriginal people.

We do not want the same thing to happen again. Many of us remember what happened when movie stars such as Bridgette Bardot affected the seal hunt. She was very effective and managed to put a stop to the purchase of seal pelts and things like that. A

heavy genocide took place across the Arctic, encompassing Canada, the United States and Siberia. If honourable senators ever have the opportunity to travel in those areas that were heavily affected, you will see the massive graveyards.

• (1620)

Let us not do that again because the lives of the First Nations people are as important and the lives of others, and we need your respect. Do not do again what was done with Bill C-6. Bill C-6 was bad enough.

I am not sure how I will be able to deal with some of my colleagues in the future, because I am planning to be here for some time. Some senators may think that I will be gone, but, I am sorry, I will stay.

The Hon. the Speaker: Honourable senators, I regret to advise that the speaking time of Senator Watt has expired.

Hon. Anne C. Cools: Honourable senators, I wish to ask the honourable senator a question.

Senator Watt: May I have leave to continue?

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Cools: I was listening with care to my seatmate, Senator Watt. He spoke about the consequences of the cessation of the seal hunt and the peace that was declared on seals at the behest of many popular private individuals such as the French actress, Brigitte Bardot.

In his response, he mentioned mass graveyards. Could the honourable senator amplify that statement and explain a bit more? I do not think that senators are well acquainted with some of the consequences of the cessation of the seal hunt. Perhaps it would serve the house to know more about the consequences of that decision for the Aboriginal peoples.

Senator Watt: Honourable senators, reliving the past is not easy, and it is not a good memory at all.

If senators are interested in seeing the many graveyards, I have videotapes of them. We are still living with the consequences.

When your pride, identity and integrity are taken away, what do you have left, honourable senators? You have nothing. What do people do when they have no economy but they have children and wives to provide for? They have a right to live like everyone else.

Even today, people are committing suicide because they cannot provide for the needs of their families. This is what we are going through. It will probably continue for quite some time, even though many years have passed. Passing laws such as this that are not sensitive to different ways of life will continue to affect the people we represent.

[Translation]

Hon. Aurélien Gill: Honourable senators, as Senator Watt said, reliving the past is not easy, particularly if the memories are unpleasant, but it is necessary in order to do better in the future.

Could Senator Watt tell us what happened with respect to the Inuit? I can say what happened to the First Nations before the agreements were signed. Senator Watt probably saw the same thing with the Inuit. For several years, it was illegal for First Nations to hunt, trap, harvest furbearers, or fish. Several people were put in jail and their catches seized. I am sorry to say that this still occurs today. There may be more tolerance, but this still goes on for those who do not have agreements. First Nations people are taken for criminals for exercising traditional activities that allow them to earn a living, and to practice subsistence hunting and fishing. Often you see articles in the papers after court rulings. Luckily, we have courts and judges that from time to time allow us to continue to function. First Nations and those who do not have agreements continue to have many problems concerning hunting, fishing, and subsistence activities.

Are we going to continue to add to these difficulties by passing bills such as Bill C-10B? Are we going to add problems or at some point are we going to try to improve matters? What does Bill C-10B have to offer, when First Nations people continue to be viewed as outlaws, frankly? This is never-ending. It has been talked about often and will continue to be talked about. Legislation must protect the rights of the First Nations and of the Inuit. We are Canadian citizens.

[English]

Senator Watt: I would like to respond to the first part of Senator Gills' comments. The people of Nunavik and Nunavut now have a legal text to rely on. As I mentioned to Senator Comeau, they even have constitutional protection. People who have no so-called modern treaty are still living through this on a daily basis. We Inuit at least have a so-called modern treaty. We have a reasonable chance to argue. I will take it no further than that. That is what we have in our agreement, even though we have constitutional protection, because, for some reason, the Department of Justice does not want to recognize section 35. This is an area that we would one day like to straighten out and give meaning to, and this would be a good place to do so.

I do agree that it is much harder for the people who have no modern treaty agreement to practise their traditional pursuits on a daily basis. They are under a much greater strain than we are. At least we have a reasonable chance to argue. That is what we have as an agreement. That is what we have, absent the political will of the government to implement section 35, which hampers the lives of the Inuit, Metis and First Nations.

Senator Gill's last point was whether there is anything promising in this bill on which to hang our hats.

• (1630)

I am sorry to say, honourable senators, that this bill seems to be influenced or flavoured by the views of various groups, since it is upgrading or improving a law that was passed in 1956 to include wild animals. Some people think it is about time we moved in that direction. That may be so, but in doing so, there must be a clear definition of the animals.

Honourable senators must understand that some of us live in remote communities, isolated communities, and we still use traditional hunting equipment and methods. We will continue to do that either because we find it more economically feasible or we are more sensitive to the fact that we do not want to kill any animals needlessly. There is more than one way of killing animals. Aboriginal peoples have been hunting animals for many years, and we have been successful in maintaining a certain level of harvest and managing wildlife. Perhaps those people who live in the south should question their methods of killing animals rather than questioning ours.

Senator Cools: I had deferred to Senator Gill, but the previous response of Senator Watt about these mass graves and, I suppose, mass deaths is niggling at me. Could Senator Watt give us still more information, such as what countries were involved and the number of people who perished? Does he believe that the information would be important for our consideration.

Senator Watt: Honourable senators, mass graveyards were discovered in Canada, Greenland, the United States and Siberia. The string of islands off the coast of Alaska that goes toward Siberia, is the home of the Aleuts, the native people. Mass graveyards were discovered there. Those people died because of the cessation of the seal hunt. The livelihood of the people was taken away.

As I said earlier, if honourable senators want access to the tapes for further information, I would be pleased to provide those. I have been collecting them for some time. This is not the first time I have been involved in trying to protect the lives and the livelihood of the people in the Arctic, as well as those down south, who are members of First Nations.

Senator Cools: Does the honourable senator have numbers of people who perished?

Senator Watt: I do have numbers, but I cannot recall them now. However, those numbers can be found in the information kit.

Hon. Gerry St. Germain: Honourable senators, the referral back of Bill C-10 from the other place is obviously of concern to Senator Watt. We have gone through the process of studying the bill intently, and I believe great responsibility was displayed on the part of members of the committee with respect to the plight of Aboriginal peoples. The honourable senator has put his case forward. If we refer the bill back to committee at this particular point in time, are we saying that we are prepared to resubmit, to the House of Commons, the bill with the recommendations that were made by the Senate committee?

Senator Watt: I am not sure I understood the honourable senator's question. If the bill is referred back to committee, the committee has undertaken to examine it thoroughly. Indeed, they do understand what they are dealing with, and they do have a genuine disagreement with the House of Commons on this Bill C-10B, not only in respect of Aboriginal issues but also other issues related to scientific concerns. This bill affects not only Aboriginal peoples, it will also affect other groups that I did not mention because Senator Furey highlighted those areas so well.

What will happen? I do not know. When the chairman, Senator Furey, spoke on this bill, I thought he drove the last nail into the coffin. With my speech, I am trying to put a strap around that coffin so it never opens again. If that does not happen, honourable senators, perhaps the legal minds can get together, so that maybe the only thing that the House of Commons can do is agree to the conference.

On motion of Senator Bryden, debate adjourned.

PUBLIC SAFETY BILL, 2002

SECOND READING—ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C., for the second reading of Bill C-17, to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety.

Hon. John Lynch-Staunton (Leader of the Opposition): I said I would speak to this before November 7 and I shall. Meantime, I should like to adjourn the debate.

Order stands.

BILL RESPECTING THE EFFECTIVE DATE OF THE REPRESENTATION ORDER OF 2003

SECOND READING—ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Smith, P.C., seconded by the Honourable Senator Léger, for the second reading of Bill C-49, respecting the effective date of the representation order of 2003.

Hon. John Lynch-Staunton (Leader of the Opposition): I will speak to Bill C-49 tomorrow, so I would adjourn the debate.

Order stands.

• (1640)

[Translation]

AMENDMENT AND CORRECTIONS BILL, 2003

SECOND READING—SPEAKER'S RULING

On the Order:

Second reading of Bill C-41, to amend certain Acts.—(*Speaker's Ruling*).

The Hon. the Speaker: Honourable senators, last Thursday, October 23, 2003, Senator Atkins raised a point of order on the acceptability of Bill C-41, to amend certain Acts. This bill has already been the subject of two rulings.

[English]

The basic objection raised by Senator Atkins has to do with the complexity of the bill. This complexity arises in connection with the bill's coordinating amendments. Some of the clauses in Bill C-41 have a direct relationship to Bill C-25, the Public Service Modernization Act, that has been adopted by the House of Commons and is currently at third reading stage here in the Senate.

[Translation]

It is Senator Atkins' view that Bill C-41 violates the rule of anticipation because these coordinating amendments assume that the Senate will dispose of Bill C-25 in a certain way. Consideration of Bill C-41, the senator argues, should not be allowed to proceed until the Senate has completed its examination of Bill C-25. "The government has assumed," Senator Atkins said, "that the Senate will pass Bill C-25. It is assumed that the Senate will not make changes to Bill C-25 in terms of terminology used in the bill."

[English]

For her part, Senator Carstairs agreed that there are coordinating amendments in Bill C-41. Their purpose, as the Leader of the Government explained, "is to resolve possible conflicts between successive amendments to the same provision and to avoid having one bill undo the work of another."

I have taken the opportunity to review the relevant amendments and I am now prepared to give my ruling. As Senator Atkins pointed out when he referred to Beauchesne, a standard Canadian parliamentary authority, the purpose of the rule of anticipation is to avoid having the House debate an item that might anticipate debate on the same subject in a more effective form. Debate on an amendment, for example, could violate the rule of anticipation if it blocked debate on a motion or, more importantly, on a bill or any other Order of the Day. This rule is not always easily understood, but its purpose is related to the rule and practice of avoiding debate on the same question twice.

In this particular case, the rule of anticipation does not come into play. This is because the rule cannot be invoked where the item or subject being anticipated is in an equally effective form. The alleged anticipation involves coordinated clauses contained in two separate bills, Bill C-25 and Bill C-41. Being clauses to bills, they are in equally effective form. Furthermore, the same question rule, which is related to the rule of anticipation, is not always applicable to cases involving legislation. This is particularly the case with a bill such as Bill C-41, the very purpose of which is to make technical corrections to various bills or statutes including Bill C-25.

Accordingly, it is my ruling that there is no point of order and debate on Bill C-41 can now proceed.

Senator Bryden.

POINT OF ORDER

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I rise on a point of order. I do so regrettably because I was anticipating listening with great care and taking notes as the honourable senator from New Brunswick was to provide an explication for Bill C-41. Unfortunately, the bill is now completely out of order for the following reason.

Bill C-41 contains coordinating amendments to Bill C-25, the Public Service Modernization Act. In particular, in clause 30 on page 17, lines 27 and 29 are identical to the language used in Senator Lynch-Staunton's amendment to Bill C-25, which the Senate has just voted down. We are clear on that. Therefore, this house has already pronounced itself on this particular question.

Senator Oliver: That is pretty clear.

Senator Kinsella: Honourable senators, on page 67 of the *Rules of the Senate*, rule 63(1) states:

A motion shall not be made which is the same in substance as any question which, during the same session, has been resolved in the affirmative or negative, unless the order, resolution, or other decision on such question has been rescinded as hereinafter provided.

Honourable senators, our rules are very clear: "A motion shall not be made which is the same in substance as any question which, during the same session, has been resolved in the affirmative or the negative..."

We have thus resolved the question of clause 30, page 17, lines 27 and 29.

(1650)

Unfortunately, it was resolved in the negative.

Ersine May Parliamentary Practice, 22nd edition, at page 333, states as follows:

A motion or an amendment which is the same, in substance, as a question which has been decided during a session may not be brought forward again during that same session.

It is very clear.

We go to the precedents. Speaker Francis of the other place ruled on February 3, 1984, that a motion to debate further a matter which has already been decided by the house is inadmissible.

In *House of Commons Debates* at page 1051, Speaker Francis said:

Precedent dictates that the House cannot accept another motion to reverse a decision of the House nor a motion to reflect upon a judgment of the House.

Honourable senators, *Beauchesne's Parliamentary Rules and Forms*, on page 192, citation 624 (3) states:

There is no rule or custom which restrains the presentation of two or more bills relating to the same subject and containing similar provisions. But if a decision of the House has already been taken on one such bill —

As it has in this instance —

— for example, if the bill has been given or refused a second reading, the other is not proceeded with if it contains substantially the same provisions and such a bill could not have been introduced on a motion for leave. But if a bill is withdrawn, after having made progress, another bill with the same objects may be proceeded with.

Bill C-41 in clause 30 is now proposing the same provision that has just been decided upon by the Senate of Canada. Therefore, Bill C-41, at least those provisions of it, cannot go forward in this session in its current form.

Some Hon. Senators: Hear, hear!

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, the members of the opposition never cease to astonish me.

Hon. Marcel Prud'homme: This is just the beginning.

Senator Robichaud: Huge amounts of time have been taken up in discussions of points of order that are not really points of order, such as the one from Senator Kinsella.

Honourable senators, it would be too easy for the opposition, or anyone else, to make a motion in amendment to another bill. The amendment we have just voted on was to Bill C-25. It had nothing at all to do with Bill C-41, on which we are finally going to initiate debate. When reference is made to a vote on a question, what was involved was an amendment to Bill C-25, not Bill C-41.

It would be so easy to propose amendments, have the government vote against it, and claim that because a certain clause had already been voted on, the same item could not be voted on again. As a result, the business of this chamber would be completely paralyzed. I believe that the opposition does not want to move forward, even though I do not understand the motive, unless it is only to slow down the debate.

Honourable senators, when points of order are raised regarding the unacceptability of a bill, a motion or a question, this should not be done piece by piece, as was being done at first.

On the second point of order we had the same ruling as on the first. The third point of order was similar to the first and second. The same ruling was given, that there was no point of order. And here before us we have a fourth point of order.

Honourable senators, I believe that there is an attempt to stretch the rules somewhat and use up the time the honourable senators present could spend discussing serious issues. I do not think there is a point of order. I hear from the other side that this argument is not strong and I shall reply that their argument is no more convincing.

Senator Prud'homme: On the same point of order, the words we have just heard from Senator Robichaud surprise me somewhat. The honourable senator is a calm and elegant man. His claim that we are deliberately, and by all available means, trying to slow down consideration of this legislation, seems somewhat odious to me.

Honourable senators, the Leader of the Opposition, Senator Lynch-Staunton, reminds us constantly that we have an agenda lasting until December. That may be the case; I do not know. Still, we may assume that we are being forced into adopting a program that might get through if we left Parliament to do its usual work, work we do very well in the Senate I may say. However, if, despite leaving it unspoken, they are floating the idea that we shall all disappear on November 7...

You know, we learn a lot by rubbing shoulders with the staff — and I am not speaking of the hierarchy or the Privy Council — when the waiters and waitresses tell you that their jobs are ending on November 7, and they wish you a Merry Christmas.

The minister can presume to know our intentions. We can also presume certain things, as the minister continues to claim that we will be sitting until Christmas. Whom are we to believe?

[English]

The Hon. the Speaker: I remind honourable senators that we are on a point of order raised by Senator Kinsella as to whether Bill C-41 is in an acceptable form given certain circumstances. Please confine your comments on the point of order to the question.

[Senator Robichaud]

Hon. John G. Bryden: Honourable senators, I rise because I believe what is happening here is an abuse of my privileges and those of every senator in this place.

We come here to try to go to the substance of issues not to spend an entire week on nothing other than form. The point of order could have, and should have been, made in the first instance, instead of the piecemeal approach of point of order after point of order while pretending that there is something of substance to be discussed.

What is occurring, with all due respect, is simply obstruction. Honourable senators, I cannot help but wonder why. I am wondering if what is happening is an audition by the existing leadership on the other side for the incoming party that will be choosing new leaders — I see Senator St. Germain sitting over there —

• (1700)

An Hon. Senator: Gerry for leader. The best choice you have made since I met you!

Senator Bryden: — and to prove that what was, and I guess still is, the Progressive Conservative Party really does fit into the political culture of the Reform Alliance, whose obstructionist, technical tactics are well known to all of us.

I never thought that I would be saying this.

Senator St. Germain: What about the GST debate?

Senator Bryden: However, if that is the case, one would look forward to having a former member of the Reform Alliance Party — and, who knows, perhaps Senator St. Germain may win.

Senator St. Germain: Running scared!

Senator Bryden: I believe we should be proceeding. What is occurring here is a very significant abuse of the privileges of every senator who is here trying to do the public business of the Parliament of Canada.

Some Hon. Senators: Hear, hear!

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, if I could get back to the point of order, I would like to point out to Senator Robichaud that, while the two points of order which we have raised have not been upheld, the facts which we have stated have not been dismissed. The fact is that the titles are misleading, not complete. We are being told that it is not within our authority to bring the corrections that should be brought to them. We get a bill from the House under their traditions, and if they feel that this is satisfactory, then we have to go along with it.

It is not obstruction in which we are engaged; it is in pointing out to this chamber that we are receiving legislation from the other side that is not as clear in the titling, both long and short, as it should be.

As for this point of order, it is quite clear that our rules do not allow us to consider the same item twice in the same session. It is as clear as that — to us, anyway. We have never spoken against a bill. Personally, I find nothing in the bill that I would object to — nothing. Maybe you can tell me. They bring corrections and all that; we just do not like the form in which it is being done, that is all.

We feel now that the Senate has disposed of an amendment to Bill C-25 which is also turning up in this bill, we cannot vote that amendment a second time. It is not an amendment to Bill C-41, as Senator Robichaud pointed out; it is an amendment to Bill C-25, which is contained in Bill C-41. We have already disposed of the amendment to Bill C-25, which is contained in Bill C-41 as also an amendment to Bill C-25. The argument we are presenting is that we are not, according to our rules and the practices of Parliament, allowed to consider the same item a second time in the same session.

Hon. Bill Rompkey: Honourable senators, my question would be following on Senator Bryden's point about raising points of order at the earliest opportunity.

The Hon. the Speaker: Senator Rompkey, we are not in debate. We are discussing the irregularity of a bill. You can intervene, by all means, but not to put questions.

Senator Rompkey: Let me make the point then, Your Honour, that when points of order are to be made, they should be made at the earliest possible opportunity — that is, at the beginning of debate and at first reading. Surely the opposition had these bills before them; surely they studied them and their researchers advised on them, and yet they have never raised the points of order until now. All of which leads us to believe that this is probably a duck. If it walks like it a duck and talks like a duck, it is probably a duck.

Senator Lynch-Staunton: I was intending to buy one of your books, but you probably will not give me the discount.

[Translation]

Hon. Pierre Claude Nolin: Honourable senators, I would like to enlighten the Deputy Leader of the Government. I would like you to take your copy of the *Rules of the Senate* and read subsection 63(1):

A motion shall not be made which is the same in substance as any question which, during the same session, has been resolved...

"Not" means that no motion is to be made; "not" is "not." That is what happened in an amendment to Bill C-25, and the decision was made. The question has already been resolved.

I will continue to read:

...in the affirmative or negative, unless the order, resolution, or other decision on such question has been rescinded as hereinafter provided.

The expression "hereinafter provided" refers to subsection (2), which states:

An order, resolution, or other decision of the Senate may be rescinded ... if at least two-thirds of the Senators present vote in favour of its rescission.

Honourable senators, it seems that the point of order is entirely appropriate. This chamber made a decision, and the only way to undo it is to rescind the decision that was previously taken. That has not been done. At this time, the point of order is entirely appropriate.

[English]

The Hon. the Speaker: Are there any other senators who wish comment? If not, I call on Senator Kinsella.

Senator Kinsella: Honourable senators, I am only speaking to the point of order, but I think that it is interesting and instructive that the ruling that Speaker Hays has just rendered, if you look at the penultimate paragraph, the Speaker has confirmed in that ruling that the rule of anticipation is not applying. Why? Because he has ascertained that where the item or subject-matter being anticipated is in an equally effective form — the alleged anticipation involves coordinated clauses contained in two separate bills, Bill C-25 and Bill C-41 — being clauses to bills, they are in equally effective form. The Speaker is confirming that, in Bill C-25, there was an amendment, and it was a motion.

In the point that Senator Nolin just made, the rule says, "any motion." We had a motion. It was a motion in amendment by Senator Lynch-Staunton. The government had the opportunity to embrace that motion; but in their stubbornness, they rejected that opportunity. Therefore, in terms of parliamentary procedure, the government was not denied an opportunity to express itself on the question. They knew exactly what the question was — they had a day to think about it — and His Honour has reconfirmed that, yes, it is the same motion in the two bills, word for word.

The government has made an error. They should have adopted the motion in amendment. Why they did not adopt it probably speaks to this mess that they get into when they try to force things — some arbitrary time limit that they will not own up to — and they would bend parliamentary procedure even when they make mistakes.

This rule has such a long history. We do not want, at a whim, to be modifying this rule. There is a long tradition and a lot of precedence in parliamentary procedure that speaks to this rule. This is not a new rule. Therefore, our rule book is clear on the face of it. I have cited several parliamentary authorities that confirm it. I have cited precedents ruled upon by other Speakers that support the rule. What we have had here is a question brought before us and determined by the Senate, and it is now being attempted to be brought before us once again.

• (1710)

The rule is clear: That same question cannot be raised here again. This is a serious issue. We have heard political arguments from the other side. The procedural argument, which is what the point of order should be focusing on, is a serious issue. A long history of parliamentary tradition and parliamentary precedent speaks to it. It is not a frivolous matter at all.

The Hon. the Speaker: I would thank senators for their comments on the point of order raised by Senator Kinsella, as well as Senators Robichaud, Bryden, and others for their remarks on the ancillary point raised about whether there is anything not in order about proceeding.

I will take the matter under consideration and return with my ruling as soon as I possible.

THE ESTIMATES, 2003-04

REPORT OF NATIONAL FINANCE COMMITTEE ON SUPPLEMENTARY ESTIMATES (A)— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Biron, for the adoption of the ninth report of the Standing Senate Committee on National Finance (Supplementary Estimates (A) 2003-2004), presented in the Senate on October 22, 2003.

Hon. Donald H. Oliver: Honourable senators, I am pleased to rise to participate in the debate started yesterday by the Honourable Senator Day.

The report of the Standing Senate Committee on National Finance on Supplementary Estimates (A) for the 2003-04 fiscal year notes that the Canadian Firearms Centre was again a topic of discussion.

Indeed, this marks the twelfth time that Parliament has been asked to approve additional spending for the firearms registry through the use of Supplementary Estimates, a practice that drew heavy criticism from the Auditor General in her report last fall, wherein she noted under the heading "Obstacles to accountability":

Between 1995-96 and 2001-02, the Department obtained only about 30 percent of \$750 million in funds for the Program through the main appropriations method; in comparison, it obtained 90 percent of funding for all of its

other programs through the main appropriations. Little additional information was given to explain the need for major supplementary estimates for the Program other than the required brief one-line statement that identified that the funds were for the Program.

To enable Parliament to maintain control over the public purse, departments ask for approval of supplementary estimates only for unanticipated expenditures not approved by the Treasury Board in the normal business cycle or for those which cannot be estimated in advance.

Honourable senators, among her many observations about this program, the Auditor General said that, even though the firearms program was designated as a major Crown project from the beginning, the government has provided insufficient information to Parliament. We know that the running total to set up and operate the registry will be about \$1 billion by the end of next year. It has been suggested that the true figure may be much higher, if spending by all other departments is included.

The burning question is: Where did all the money go? How can you spend \$1 billion on a program that was supposed to cost only a fraction of that amount?

Honourable senators, now that the Canadian Firearms Centre is a full department, we are finally, some eight years into the program, starting to get a trickle of information about where the money goes.

As a result of Supplementary Estimates (A), we now know, for example, that the gun registry has a payroll of \$22.6 million. That is just the payroll for the people on the staff. As a result of questions posed in committee by Senator Comeau, we also know that this covers the salaries of 279 people, of whom 153 are clerical.

Honourable senators, divide \$22.6 million by 279 and you get an average salary, including benefits, of \$81,000. Mr. Mike Joyce of the Treasury Board confirmed this figure in response to a question at committee, stating:

That would be the average salary; but it would, I believe, also include what we call the benefit portion, for instance, the contributions that have to be made to the pension plan.

Honourable senators, even if we assume that benefits and payroll taxes amount to 15 per cent of salary, this seems a bit out of line for a department where the vast majority of people hold clerical positions. Perhaps there is a proper explanation regarding this average salary, but the committee was certainly not able to find it.

Perhaps if the committee had more time, it could also have delved into why this department needs a 13-person public affairs office, the number of individuals the government phone book identifies as employed in that capacity.

As a minor aside, I note that, as of mid-October, the online government phone book lists this department not by its legal name as the "Canadian Firearms Centre," but as the "Canada Firearms Centre." Given the billion dollar cost of this boondoggle, could some effort not be made to at least get the name right?

Where else is the registry spending money? There is a transportation and communications bill of some \$9 million, and \$16 million goes to the provinces for their costs. However, the number that really stands out is its professional and special services budget of just under \$59 million. In other words, its bill for consultants is two and a half times its bill for salaries, eating up more than half its total resources.

Most of this is for computer services. Indeed, last year, the Auditor General fingered computer costs as one of the major reasons that expenses have climbed so high.

In an article in *The Globe and Mail* of January 4, 2003, it is noted:

The federal government spent nearly \$160 million to create a computer system to run the national firearms registry — and now it's spending another \$36 million to figure out how to replace it. That makes the total cost of the system nearly \$200 million to date.

The Globe and Mail went on to summarize a memo sent in April of last year to the then Public Works Minister, Mr. Don Boudria, stating that the federal government spent \$159 million to set up the Canadian firearms registration system, the computer database that keeps track of the firearms and licensed gun owners in the year 1997. The companies that received the contract for the work were EDS Canada and SHL Systemhouse.

Then, last year, the government awarded another \$36 million contract to an alternative service provider to re-evaluate the computer system and to look at a new program to replace it. That contract went to the CGI Group and to BDP Business Data Services.

The explanation from the Canadian Firearms Centre is that the 1997 computer system is already outdated and needs to be replaced. Should we assume, honourable senators, that five years from now we will be faced with these same costly redundancies?

Honourable senators, \$200 million is twice what Vector Capital spent last summer to buy the Corel corporation. This is a program that was supposed to have had a net cost of \$2 million. From the beginning, Parliament has not been given accurate information about future costs, a tradition that lives on.

This March, through its Part III Report on Plans and Priorities, the Department of Justice said that the firearms program would cost \$113 million this current 2003-04 fiscal year. However, a year previous, in March of 2002, the same document projected that,

for this current fiscal year, 2003-04, the cost would be \$95 million. In other words, the estimated cost climbed by \$18 million, the difference between \$95 and \$113 million.

In March 2002, the Justice Part III also projected a cost of \$80 million for fiscal 2004-05. In March 2003, the Part III now projects the cost for fiscal 2004-05 will be \$95 million, or \$15 million more than previously thought. The government is telling us that they are working on this program to make it more cost efficient.

Some \$18 million this year, plus \$15 million next year, equals an additional \$33 million over two years beyond what was expected just last year.

• (1720)

What would the extra tab be with these measures to contain costs? Again, this is an ongoing problem. The costs are always more than we have just been previously told. Are we to accept as credible the government's projection that program costs will fall to \$95 million next year, and to \$76 million the year after next, or should we treat those numbers with a grain of salt? Unless the next government pulls the plug, do not bet the farm on significant cost reductions any time soon.

Page 15 of this year's Report on Plans and Priorities for Department of Justice also includes a warning that:

The Alternative Service Delivery contractor has indicated that the scope of the work to achieve certification exceeds the estimated efforts, due to unanticipated requirements.

The key words here are "unanticipated requirements." The additional work may cost as much as \$15 million and is not included in the planned spending. Should we take that to mean that there will be a Supplementary Estimates "B" for the firearms centre, or does it mean that we should toss next year's projected cost figure out the window? The bills just keep coming and coming.

Honourable senators, a great deal of attention has been focused in both the Senate and the other place over the \$10 million to be voted for the Canadian Firearms Centre. Government departments are indeed allowed to carry funds forward if they are not used, with their use confirmed in a supply vote. However, there are a few things that are unusual about this carry-forward. First, there is the amount of exactly \$10 million. Normally, the amounts carried over through a vote in a supply bill are a little less rounded than the exact multiple of a million. For example, the carry-forward votes last year included \$19,389,000 for Agriculture vote 1a, and \$13,811,000 for Agriculture vote 30a. Last year's Justice vote 1 covered much more than the firearms registry. It was the operating budget for the entire department.

You have to wonder if the government, in its efforts to make it look like there was no new money for the firearms registry, simply took leftover funds from other programs funded through the justice vote, such as youth justice and crime prevention, and slapped on a label that read "firearms."

The second curious thing is that last year the government withdrew its original request in Supplementary Estimates "A" to provide \$72 million to the gun registry and replaced it with a \$59 million vote in Sups "B", a \$13 million reduction. Add \$13 million to the \$10 million left over and we are asked to believe that the registry got by with \$23 million less than it originally sought.

As to how the government managed to have \$10 million left over, Mr. Mike Joyce of the Treasury Board told the National Finance Committee the following at its October 7 meeting:

They did not spend \$10 million, as they had planned in the previous year because the new licensing and registration system did not proceed as quickly as anticipated, primarily because of the delays in the passage of Bill C-10A...

— which this Senate knows something about —

...and the delays in making planned changes to the regulations.

The explanation boils down to Parliament not passing Bill C-10A.

Honourable senators, last fall, as part of its response to the Auditor General's scathing report on the costs of the firearms registry, the Department of Justice said:

The government has tabled amendments to the Firearms Act (C-10) that would further improve program efficiency and allow for alternative means of program delivery.

It sounds like the Justice Department was arguing that Bill C-10 would reduce costs through improved efficiency. Now we are told that that money was left over from last year because Bill C-10 did not pass. Could the Justice Department and the Treasury Board please get their stories straight?

For that matter, if Bill C-10 was not yet law, why did the government ask Parliament for the money in the first place? Is that not putting the cart before the horse?

These Estimates allow some \$105 million to be transferred from the Justice Department to the Canadian Firearms Centre, which has become a full department, and to the RCMP, which will take over some of the gun registry work. There is nothing unusual about using the Estimates to move money from one purpose to another. It is done all the time, and it is part of the process of ensuring that spending has the sanction of Parliament. What is unusual in this set of Supplementary Estimates is the presentation.

[Senator Oliver]

Transfers by themselves do not involve any increase in spending. Funds intended for department A are moved to department B, or money voted for Agriculture vote 1 "operating" is moved to Agriculture vote 5 "capital," to move it from an operating account to a capital account.

Since 1990, a summary table in each set of Supplementary Estimates has shown the transfers and the amounts of additional funds requested by departments. Until now, the transfers have always netted out to zero. If you move \$7 million from Industry vote 85 to Industry vote 75, as is also done in these Supplementary Estimates, no new spending authority is requested. You add, you subtract, and you end up with zero additional spending.

On page 14 of the Supplementary Estimates, you will find totals for the funds already voted through previous Estimates in one column, for transfers in another, for new appropriations in the next, and total current in the final column. In its quest to make sure that we know that this is a transfer, the government shows the total transfers as \$105 million, equal to the gun registry transfer. It arrives at this result by not subtracting out the money taken from Justice votes 1 and 5.

The Hon. the Speaker pro tempore: Honourable senators, I regret to inform the honourable senator that his time for speaking has expired.

Senator Oliver: Honourable senators, may I have another five minutes?

The Hon. the Speaker pro tempore: Honourable senators, is it agreed?

Hon. Senators: Agreed.

Senator Oliver: Thus, we arrive at a curious situation where money that is in fact a transfer is added to the total Estimates to date.

When the Governor General recommended these Estimates to Parliament, was she recommending the amount to be voted in this supply bill or was she recommending an amount that was \$105 million more than that, as shown in the Estimates documents tabled by her ministers?

Are the total funds voted through supply to date \$64.7 billion or are they \$64.6 billion? The Treasury Board officials admitted to the Standing Senate Committee on National Finance that this was not the right thing to do, and promised not to do it again.

It ought not to have been done in the first place, as it calls into question the accuracy of the information the government tables in Parliament, information that we rely upon to assess the proposals that are placed before us.

Honourable senators, I will conclude by noting that, regardless of whether you support the Canadian Firearms Registry or whether you believe that the money would be better spent elsewhere, we all ought to support full and proper disclosure of program costs and due regard for economy. We are still not seeing this in relation to the gun registry.

On motion of Senator Comeau, debate adjourned.

[Translation]

LIBRARY AND ARCHIVES OF CANADA BILL

FIRST READING

The Hon. the Speaker pro tempore informed the Senate that a message had been received from the House of Commons with Bill C-36, to establish the Library and Archives of Canada, to amend the Copyright Act and to amend certain Acts in consequence.

Bill read first time.

The Hon. the Speaker pro tempore: Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for second reading two days hence.

• (1730)

[English]

HOLOCAUST MEMORIAL DAY BILL

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Poulin, seconded by the Honourable Senator Fairbairn, P.C., for the second reading of Bill C-459, to establish Holocaust Memorial Day.—(*Honourable Senator Cools*).

Hon. Tommy Banks: Honourable senators, I wish to say two things about this bill. First, yesterday, Senator Corbin spoke about a matter of principle to him and a procedural matter, and was not making his remarks in respect of this bill alone. I hope that honourable senators will remember that with other bills dealing specifically with the establishment of memorial days, Senator Corbin has spoken in exactly the same terms about those bills as well. His point is that they ought to receive the usual treatment in this place.

My second point is that, with respect to Bill C-459, I wish to support Senator Corbin by saying that this bill clearly has to go to committee. It is my opinion that this bill requires amending. In the sixth paragraph of the preamble to the bill, it says:

WHEREAS the House of Commons is committed to using legislation, education and example to protect Canadians from violence, racism and hatred and to stopping those who foster or commit crimes of violence, racism and hatred...

The House of Commons is part of Parliament, but it is clear to me that this paragraph in the preamble ought to say: "WHEREAS the Parliament of Canada is committed..."

I might have been prepared to say that in the interest of getting this bill passed we should ignore that, but I will not do that, honourable senators, because the exact same thing happened with another bill on another memorial day in June. I see Senator Atkins nodding. He will remember that at the tail end of a meeting on that particular, for which I was regrettably late, I found the same omission had been made. At the time, we were on a telephone conference call with a Member of the House of Commons who was the author of that bill, whose final result was exactly as admirable as this one was. No one here questions the end purpose of this bill. At the time, we exacted, as I understood it, an undertaking, which was to be conveyed to the Speaker of the House of Commons, that this kind of oversight, as opposed to intentional omission, ought not to be made, and that care ought to be taken to ensure that when pronouncements are being made about the objects of the Parliament of Canada in bills which seek to commemorate or designate a particular day, it be remembered that there are two Houses of Parliament.

Senator Corbin's point that this bill be referred to committee for study, and I hope that committee will take into account the necessity to amend this bill at least in that respect, ought to be called to the attention of all senators, and I hope that they will support that contention.

Hon. Marcel Prud'homme: Will the Honourable Senator Banks take a question?

The Hon. the Speaker pro tempore: Will you take a question, Senator Banks?

Senator Banks: Certainly.

Senator Prud'homme: Honourable senators, one of the misunderstandings that exists in English started 20 or 22 years ago. In English, the press and even honourable senators often refer to members of Parliament and Senators. In French, there is no ambiguity whatsoever; we say "les députés" and les "sénateurs."

We discussed this the other day. This oversight has not been addressed. I hope people will correct it. It starts the minute you arrive on Parliament Hill at the security platform when you see, "members of Parliament and Senators only," whereas in French it says "députés et sénateurs."

This confusion is so prevalent that members of the other place think that we are excluded from the term "members of Parliament." Our staff and committee reports should start saying that a meeting was attended, for example, by 20 senators and 20 members of the House of Commons. This reluctance to use "members of the House of Commons" started 22 years ago and now it is growing to the point where now people think we are not parliamentarians; we are just senators.

I hope eventually we will talk about that. Every time I see that term, it reminds me of the confusion that exists.

Senator Banks: Honourable senators, I guess that was a question. I always make a point, when the opportunity arises, to indicate that I am a member of Parliament.

Senator Prud'homme: Good.

Senator Banks: We are all members of Parliament. I was careful in my previous remarks not to use the appellation "MP," which I try not to, and referred to the person with whom we were speaking on the telephone as a member of the House of Commons. I am always careful to do that, as is Senator Prud'homme.

Hon. Anne C. Cools: Honourable senators, I would like to join this debate.

I support Bill C-459. My interest in these matters is ancient. Many senators would not know this, but the oldest Jewish settlements in the New World were in the West Indies, particularly in Curaçao. In Barbados, where I was born, there were Jewish settlements dating from the 1600s. If you were to look around the British Caribbean, you will see names like Da Lima and Da Sousa and Da Costa. Those are Jewish-Portuguese names. The Jewish settlements were thriving communities in the British Caribbean in the 1600s. In Barbados, the old synagogue is still there. It was refurbished in the last 15 years or so. Its old graveyard still has tombstones from 1650s. There are places like Synagogue Lane and there was a street called Jew Street.

In addition, many people in that part of the world have a Jewish grandfather or great grandfather, even persons such as myself, for example. Therefore, my understanding of these issues is quite ancient.

• (1740)

I hasten to add that on the other side of the community there are people who are quite prevalent in the British Caribbean who are called Syrians. There were Lebanese and Christian Arabs. Many of those people came around 1916 and quite often arrived with the clothes on their back. Senator Prud'homme knows that history.

To make a biblical reference, one should always remember the sons and children of David, but we should always be cognizant of the children of Ishmael as well. I am sure that honourable senators are aware of who Ishmael was. Ishmael was the bond child of Abraham and Hagar, the slave woman — the bond woman. The Jewish people are descended of Abraham's legitimate son Isaac, with Sarah. The Arabian people claim their descent from the children of Ishmael, Ishmael and Isaac are both sons of Abraham, the great patriarch.

For those here who are no longer Bible readers, it would be nice to make references once in a while to what I would call the shared historical and cultural facts.

Today, we are not talking about the children of Ishmael; today we are talking about the children of Israel, the children of Jacob, the son of Isaac.

Recently, because of another bill, I have been doing some work on genocide, and I was able to learn that the word "genocide" was created by a Polish-Jewish lawyer, Raphael Lemkin. He was a great scholar who was able to escape to the United States of America around 1941. He published a book in August 1944 called *Axis Rule in Occupied Europe*. He is the person credited with having created the word "genocide."

I always thought that "genocide" was from the Latin "gens" and "cide," but he uses it from the Greek "genos", which means "race" or "tribe," and "cide," which means killing.

I will read from chapter 9 of Raphael Lemkin's book, which chapter is titled "Genocide."

New conceptions require new terms. By "genocide" we mean the destruction of a nation or of an ethnic group. This new word, coined by the author to denote an old practice in its modern development, is made from the ancient Greek word *genos* (race, tribe) and the Latin *cide* (killing), thus corresponding in its formation to such words as tyrannicide, homicide, infanticide, et cetera. Generally speaking, genocide does not necessarily mean the immediate destruction of a nation, except when accomplished by mass killings of all members of a nation. It is intended rather to signify a coordinated plan of different actions aiming at the destruction of essential foundations of the life of national groups, with the aim of annihilating the groups themselves. The objectives of such a plan would be disintegration of the political and social institutions, of culture, language, national feelings, religion, and the economic existence of national groups, and the destruction of the personal security, liberty, health, dignity, and even the lives of the individuals belonging to such groups. Genocide is directed against the national group as an entity, and the actions involved are directed against individuals, not in their individual capacity, but as members of the national group.

Honourable senators, at some point in time Raphael Lemkin served in the trials at Nuremberg, and I believe he served in the office of the U.S. chief prosecutor, who, I believe, was Robert Jackson, a judge on the Supreme Court. There was a great controversy at the time about whether judges should be allowed to take part in that tribunal.

What is often forgotten about that tribunal, because it really has no link to the modern day criminal courts or the International Criminal Court, is that it was an international military tribunal. It essentially had to do with justice as administered by the victors against the vanquished, and we must remember that. The evidence on which they tried the lead members of the Nazi community was actually obtained from the Nazis themselves, from their files and so on.

[Senator Prud'homme]

Honourable senators, I wanted to speak on Bill C-459 because of my feeling that the Holocaust was of such enormity that it still remains slightly incredible to many of us, and I do think that it should stand as a memorial to human cruelty and man's inhumanity to man.

As Lord Shawcross, the U.K.'s prosecutor at Nuremberg, said, it was certainly a set of black-hearted deeds. I want to lend my support to that view.

I think it would be the wish of us all to see peace in the Middle East and a resolution to that set of problems. I am very supportive of the initiatives of Mr. Bush in trying to accomplish a state for the Palestinian people.

Having expressed my support, honourable senators, I would like to turn to the question that Senator Banks just raised. He spoke of the absence of mention of the Senate in the preamble of this bill. The bill itself is extremely short. It has one substantive clause. It essentially creates a Holocaust memorial day.

I wish to support Senator Banks in his initiative. I hope that in committee this question of the recognition of the Senate in the preamble of the bill will be dealt with.

Honourable senators, I find it tedious that we must keep reasserting and reaffirming that senators are members of Parliament and that we are equal partners in the Constitution. It behoves us all to keep making the point again and again, and I would like to see that matter sorted out.

• (1750)

In closing, honourable senators, it is no secret that I am a Christian person, and it is no secret that I am very comfortable with the lexicon of Christianity and the notions of life as a journey and a pilgrimage, and the grand scheme of life as a mystery where, somehow or the other, we are each and every one trying to work out our own salvation, which has to be done individually and which, at the end of the day, can only be done with God's grace, as we attempt to discover it.

Honourable senators, with this grand mystery of life, as we sit on God's creation, God's beautiful earth, with bountiful nature, at the end of the day, human behaviour remains a great enigma to all of us. Human motivation continues to elude us. Human greed and jealousy and envy and spitefulness and cruelty continue to puzzle us and to burden our minds. In fact, it remains a grand mystery as to why human beings hurt each other, and why human beings kill each other, and why they do terrible things to each other. This Holocaust, this thing that happened in Germany, remains one of the biggest enigmas of all, because Germany was such a modern country and was reputed to be so liberal-minded to its citizens.

Honourable senators, I see bad bills passed again and again. I see terrible things go on all the time because human beings quite often, either by fragility, by weakness, by fear, by ignorance or whatever, allow bad things to happen. This is how evil prospers something like the Holocaust happen? I hate to tell you, honourable senators, that maybe I am growing a little bit older, but I now understand. There is something in the nature of the exercise of power that pushes to excess. The natural disposition of human beings is to violate the boundaries of power.

Saint Augustine called it the *libido dominandi*, the lust for dominion, the lust of power, the libido, whether it is a little issue or a large issue, it is when those in power exceed limits and their followers yield to them, bad things happen. That is how the Hitlers of the world came to power and got away with it.

The Hon. the Speaker pro tempore: Honourable senator, I regret to inform you that your time for speaking has expired.

Senator Cools: I would ask leave to finish off the thought. Is it agreed, honourable senators?

Hon. Senators: Agreed.

Senator Cools: I was talking about the natural disposition of human beings to excess in power. I wanted to make the point that that is why we need constitutional checks and limits.

Honourable senators, when I was quite young, I watched a film with scenes from the Holocaust. I describe this because it was just so upsetting. They were pushing people, loading them into ovens, and they were using pitch forks to move the people along. It affected me deeply to watch this. I asked why. The nature of "why" is always in "because." Leaders can be bad because followers allow them to be.

Senator Prud'homme: Honourable senators, I am an avid reader of the Bible, the Old Testament and the New Testament, so I checked quickly, for the record, that Abraham, indeed, had a wife named Sarah. He had another lady, a maid, by the name of Hagar, and Hagar had a son called Ishmael, the ancestor of all Arabs. Sarah, the wife of Abraham, had a son named Isaac, and Isaac had two sons, as you know. Strangely, and I would like to put on the record, since we do not talk about it often, that, Sarah, the wife of Abraham, had Hagar and her son expelled from the side of Abraham. I now see all the scholars giving me their attention.

Isaac had two sons, and one, Jacob, was the father of 12 children who formed the tribes, and they say that one is the lost tribe.

I must say that the events of last night provoked lots of soul searching. As a result I wish to make a few personal comments.

Having said that, I would like to speak on this issue, and I would ask to adjourn the debate under my name.

Senator Cools: Honourable senators, the historical description given by Senator Prud'homme is quite accurate. If honourable senators wish to look it up, they can find it in the Old Testament in the book of Genesis. Hagar is the mother of Ishmael. She was a bond servant. Sarah, Abraham's wife, was an old woman, and she said, "I can have no children. Here, have the servant." Then she, Sarah, cast Hagar and Ishmael out. The honourable senator gave a good account of the story.

On motion of Senator Prud'homme, debate adjourned.

[Translation]

STUDY ON OPERATION OF OFFICIAL LANGUAGES ACT AND RELEVANT REGULATIONS, DIRECTIVES AND REPORTS

REPORT OF OFFICIAL LANGUAGES COMMITTEE ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Losier-Cool, seconded by the Honourable Senator Wiebe, for the adoption of the Fourth Report (Interim) of the Standing Senate Committee on Official Languages entitled: *Official Languages: 2002-2003 Perspective*, tabled in the Senate on October 1, 2003.—(Honourable Senator Gauthier).

Hon. Jean-Robert Gauthier: Honourable senators, I would like to say a few words on this important report.

It has preoccupied the senators for a number of sittings. The Standing Senate Committee on Official Languages has held 11 meetings and 30 witnesses have appeared before it. The report contains 21 recommendations. I am not sure everyone is aware of how important this report is. I would like to devote a moment to it.

Recommendation 18 or 19 of the report affects Bill C-25, which we are discussing at this time. It merely states that, in connection with language training to develop our public service, we ought to look to the private sector for its expertise and see whether it could not be used to provide language upgrading courses to those public servants who wish to become bilingual in order to do justice to the positions they hold.

There are all manner of reasons to think that the government always does things better than the private sector. In education, I can tell you that we have a good reputation as far as language training goes. The Public Service Commission used to do a good job with it, and huge challenges were met.

[Senator Prud'homme]

• (1800)

We have proven that was not true. Today, we do things in a professional and competent manner.

Honourable senators, the committee's fourth report addresses a number of topics.

[English]

The Hon. the Speaker pro tempore: Honourable senators, it is 6 o'clock. Is it agreed that we not see the clock?

Hon. Senators: Agreed.

[Translation]

Senator Gauthier: One of the recommendations touches on a question of great concern to me: Ottawa, the capital of Canada, ought to be a bilingual city. One of our recommendations mentions that the Senate dealt with this issue four years ago, in 1999. A motion, which I made, was unanimously adopted and, as we all know, a Parliament never goes back on its word. We are already committed.

I would like to conclude by saying that the committee's report is important. It is important that the Senate follow up on these reports. We are tabling a number of them and I give notice that, after the report is adopted, I will ask that the government give a comprehensive, full and complete response to the report, so that we know where we are going after the presentation of our reports.

The Hon. the Speaker pro tempore: Honourable senators, is it your pleasure to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and report adopted.

STUDY ON DOCUMENT ENTITLED "SANTÉ EN FRANÇAIS—POUR UN MEILLEUR ACCÈS À DES SERVICES DE SANTÉ EN FRANÇAIS"

REPORT OF SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY COMMITTEE—DEBATE CONTINUED

On the Order:

Resuming debate on the consideration of the Seventh Report of the Standing Senate Committee on Social Affairs, Science and Technology (*document entitled: Santé en français — Pour un meilleur accès à des services de santé en français (French-Language Healthcare — Improving Access to French-Language Health Services)*) tabled in the Senate on December 12, 2002.—(Honourable Senator Chaput).

Hon. Maria Chaput: Honourable senators, I will be speaking about the consideration of the document entitled "*Pour un meilleur accès à des services de santé en français*", tabled in the Senate on December 12, 2002, by the Standing Senate Committee on Social Affairs, Science and Technology.

[English]

I should like to commend the members of the Social Affairs Committee on their excellent analysis of that document. I will discuss the committee's recommendations at the end of my address.

[Translation]

At the risk of repeating the statements of my honourable colleagues who took part in the debate, I would like to point out that this June 2001 report funded by the federal Department of Health generated much interest and concern in Canada's francophone population. Health care access for francophones is deplorable. French-speaking Canadians are, on average, older, less active in the labour market and less well educated. Half the francophone population has little or no access to French-language health services, and there are wide variations between provinces and between regions within provinces.

Honourable senators, section 7 of Canadian Charter of Rights and Freedoms raises an interesting point. It would seem that to meet section 7 requirements, health care must be accessible, within the meaning of the Canada Health Act, in the language of the minority. The preamble of the Canada Health Act states that:

...continued access to quality health care without financial or other barriers will be critical to maintaining and improving the health and well-being of Canadians.

Section 3 of the Canada Health Act declares that:

The primary objective of Canadian health care policy is to protect, promote and restore the physical and mental well-being of residents of Canada and to facilitate reasonable access to health services without financial or other barriers.

Section 41 of the Official Languages Act states that:

The federal government is committed to enhancing the vitality of the English and French linguistic minority communities in Canada and supporting and assisting their development, and to fostering the full recognition and use of both English and French in Canadian society.

The Canadian Charter of Rights and Freedoms gave Canadians the right to educate their children in the minority official language of their province of residence, and it is time that those same children and their families had the right to obtain health care in their own language.

There have been many changes in the area of minority-language health services over the past five years. Both the federal government and the community have taken concrete measures.

First, since 1999, the federal government has been funding the Centre national de formation en santé.

Second, in 2002, through Health Canada, the federal government established two committees to advise the Minister of Health in accordance with the provisions of section 41 of the Official Languages Act. They are: the Consultative Committee for French-Speaking Minority Communities, and the Consultative Committee for English-Speaking Minority Communities.

In keeping with their mandates, the two committees have sponsored important studies. The Fédération des communautés francophones et acadienne du Canada coordinated a study of the needs of and possible solutions for francophones and reported to the Minister of Health in September 2001.

At the same time, francophones in Manitoba were feeling a pressing need to coordinate the activities of the health and social services sector in order to provide the community with access to French-language services.

In 1999, the *Société franco-manitobaine* was assigned the responsibility for coordinating the sector. A provincial *Communauté en santé* board was established in 2001. The first provincial forum on French-language health and social services in Manitoba was held in 2002. Caucuses were held for central Manitoba, south-eastern Manitoba and the Winnipeg area to help identify regional and provincial priorities.

It is important to note that French-speaking Manitoba had already made some progress. In October 1990, following a report by Mr. Maurice Gauthier, selected health institutions — hospitals and residences — were designated bilingual.

In 1998, Mr. Justice Chartier evaluated the effectiveness of the provincial government's French-language services, and his recommendations relating to health services gave new hope to francophone Manitobans.

• (1810)

The key point that came out of all these activities in Manitoba was the principle of active offer. The strategies developed by Manitoba's francophones dealt with networking, primary/front-line care, improved use of existing francophone resources, and cooperation with existing structures and reception centres.

Honourable senators, I have taken the time to share Manitoba's experience with you in order to show you that there is a common thread between the priorities put forward by francophone Manitobans, the entire francophone population of Canada, the Kirby report, and the recommendations of the Standing Senate Committee on Social Affairs, Science and Technology with respect to the document entitled "Pour un meilleur accès à des services de santé en français."

The Senate Committee's report contains nine recommendations. In view of what francophones have been asking for, it is clear that those recommendations must be acted upon at once. In particular, I would like to emphasize and focus on the following recommendations:

Recommendation No. 1: "...that the federal government receive the report entitled "Pour un meilleur accès à des services de santé en français" ... and that it endorse the principles underlying the report...", in other words: regional differences; involvement of the communities; concerted effort; supply of and demand for services.

It is important to define the conditions for effective cooperation. The three partners the federal government, provincial governments and communities have to be on the same page, and joint initiatives must have the same basis, principles and objectives.

Recommendation No. 3: "...that the federal government fully support the networking strategy..."

The Romanow commission recommended cooperation among stakeholders. The Kirby committee recommended that the federal government fully support that strategy. And it is one of the intervention levers recommended by the Consultative Committee for French-Speaking Minority Communities. Everyone knows that the two key characteristics of francophones outside Quebec are their dispersion and their small numbers. Networking helps to break the isolation, fostering greater cooperation and more effective use of resources. There are now networks in every province and territory. The federal government must continue to provide financial support for that initiative.

Finally, Recommendation No. 6: "...that the federal government support the development strategy for front-line care groups and reception centres..."

Facilities must be put in place to deliver health care in French. Mr. Hubert Gauthier, Co-chair of the Consultative Committee for French-Speaking Minority Communities, put particular emphasis on the idea of "active offer." Clients must be invited openly and clearly to use the language of their choice. Without that active offer, too many francophones will hesitate to express their needs in their own language.

We need to establish facilities be they physical or virtual, that francophones will perceive as French as soon as they cross the threshold, places where they will not be looked down upon if they speak French.

[Senator Chaput]

We all know that the federal government is not directly responsible for providing health care services in the provinces and territories. That is a provincial and territorial responsibility. The federal government's role is to transfer resources to those governments to help them fulfil their responsibilities in that area.

Nevertheless, the federal government has a duty to exercise its power and play a leadership role in the equality of Canada's two official languages in order to persuade the provincial governments to improve minority French-language health care services in cooperation with the communities.

In a news release on October 6, 2003, the Commissioner of Official Languages stated:

It is essential for all levels of government to collaborate if the objectives are to be accomplished. The Commissioner is therefore asking the federal government to establish a framework to facilitate intergovernmental cooperation on official languages.

The Consultative Committee for French-Speaking Minority Communities recommended that the Minister of Health adopt a comprehensive five-year action plan, including the intervention levers recommended by all stakeholders: community networking, training, and establishing reception centres and developing primary health care.

As recommended by the Kirby Committee, rigorous use must be made of specific levers, and I quote:

It is now up to the federal government to play a leadership role in official languages in order to encourage other key partners, including provincial governments, to work together to ensure that all French-speaking living in official-language communities have access to satisfactory health care in their own language, as the majority of Canadians do.

Today we are at a particularly auspicious moment. The challenge is to lay a solid foundation so that the initiatives we take, especially in the area of service to the public, will persist long into the future.

On motion by Senator Stratton, on behalf of Senator LeBreton, debate adjourned.

[English]

STUDY ON PUBLIC INTEREST IMPLICATIONS OF BANK MERGERS

REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE—DEBATE CONTINUED

On the Order:

Resuming debate on the consideration of the sixth report of the Standing Senate Committee on Banking, Trade and Commerce entitled: *Competition in the Public Interest: Large Bank Mergers in Canada*, tabled in the Senate on December 12, 2002.—(Honourable Senator Lynch-Staunton).

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, quite frankly, I would like to have the clock rewound on this item. There are comments to be made to this report, and I hope that they will be made as early as before November 7.

On motion of Senator Lynch-Staunton, debate adjourned.

NATIONAL SECURITY AND DEFENCE

BUDGET—REPORT OF COMMITTEE ON STUDY OF VETERAN'S SERVICES AND BENEFITS, COMMEMORATIVE ACTIVITIES AND CHARTERS ADOPTED

The Senate proceeded to consideration of the sixteenth report of the Standing Senate Committee on National Security and Defence (budget—Subcommittee on Veterans Affairs—study on veterans benefits) presented in the Senate on October 23, 2003.—(*Honourable Senator Day*).

Hon. Joseph A. Day moved the adoption of the report.

Motion agreed to and report adopted.

UNIVERSITY RESEARCH FUNDING FROM FEDERAL SOURCES

INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Moore calling the attention of the Senate to the matter of research funding in Canadian universities from federal sources.—(*Honourable Senator Losier-Cool*).

Hon. Norman K. Atkins: Honourable senators, Senator Losier-Cool has agreed that I can speak to this inquiry today.

The Hon. the Speaker pro tempore: It is agreed, honourable senators?

Hon. Senators: Agreed.

Senator Atkins: Honourable senators, I rise today to speak on the inquiry of Senator Moore. It is a subject worthy of careful examination, and I thank him for bringing it to the attention of the Senate.

This inquiry stems from the pledge made just over a year ago in the Speech from the Throne. The federal government stated that it would invest in excellence in university research by, among other initiatives, increasing its funding to the federal research councils, which in turn would fund post-secondary institutions as well as individual researchers and scientists. The advancement of

university-based research initiatives is of considerable importance to the future of this country and its citizens. After all, the Conference Board of Canada reported in 2001 that among the OECD countries, 50 to 60 per cent of the basic research vital to a country's long-term industrial competitiveness is carried out at universities.

• (1820)

The federal government's announcement was therefore widely applauded. However, Senator Moore's research has found that for many universities, especially those in the Atlantic region, there has been little cause for celebration for many years. These universities have been on the losing end of an inequitable distribution of funds, and it is harming their ability to compete with larger, more centrally located universities. This situation cannot be allowed to continue.

I share Senator Kinsella's belief that the model upon which our institutions and researchers receive funds is flawed and discriminatory. The funding formula used to determine where research dollars go has been to the detriment of Atlantic Canada's universities, which are not receiving the same amount of research dollars as those in other parts of the country.

It should be noted that the word "smaller," in the context of funding procedures, does not always refer to student body size, but in the case of the Canada Research Chairs Program refers to the amount of grants received in the history of an institution. This program, in particular, has not worked to the benefit of Atlantic Canada's universities. A new allocation process is needed — one that maximizes the opportunity for the growth of university-based research across Canada, and is not based on past research performance.

The Canadian Foundation for Innovation has also contributed to inequitable funding problems through its project requirements. The CFI has always mandated that 60 per cent of a project's funding be provided by the university or the private sector before it would contribute the other 40 per cent. No CFI grant can be accessed outside of this formula.

This program may have been designed to increase private sector support for research, but the overall contribution from the private sector to all CFI-approved projects in its first five years of operation averaged less than 12 per cent — and mostly took the form of price reductions on equipment. This has meant that the majority of the matching funds have had to come from provincial governments and the institutions themselves, many of which simply cannot afford it. In a province or region where industrial partners are hard to find, as in Atlantic Canada, obtaining a 60 per cent match in funding for a research project is extremely difficult to do.

In 2000, the Prime Minister's Advisory Council on Science and Technology released a report entitled "Creating a Sustainable University Research Environment in Canada," which looked at the impact of the indirect costs of federally sponsored research. It acknowledged that funding structures were needed which would support institutions that have won less from the granting councils, while safeguarding the research environment at institutions that have earned relatively more from these bodies. The advisory council recommended a sliding scale to be used that would channel additional funds to institutions facing a higher cost structure.

One possible scenario is presented, involving percentage payments ranging in progression from 90 per cent for those institutions receiving the least granting council support, to 36 per cent for those receiving the most. Therefore, honourable senators, the federal government was made aware of the predicament Atlantic Canada's universities face with respect to attaining research funding in the year 2000.

We must ask: What will the government do about the situation, and when? In the long run, the present situation is of benefit to no one. Canada's technological competitiveness depends on research success across the country, not just in a few select regions.

The funding formulas are not the only hurdles that Atlantic Canadian universities must overcome. The Canada Research Chairs Program does not work equitably, either. A *National Post* article of September 6, 2003, raised another consequence of this program: the focus on attracting "star" or "trophy" professors at the expense of the university's primary duty — undergraduate and graduate student education. The article describes this particular outcome of the Canada Research Chairs Program in the following way:

At every opportunity, federal Liberals champion the program as a brain-gain tool, a magnet to attract international stars to Canadian universities. But so far, the program, which favours programs in the natural and health sciences at the large, research-intensive universities, appears to be more of a perfect poaching device and bargaining chip in the bid for star power within Canada.

The consequence of this manoeuvring, of course, has not been to the advantage of smaller universities. The article goes on to quote Donald Mitchell, a psychiatry professor at Dalhousie University as saying:

A lot of people are relieved of teaching, but a lot of the chairs are only available to younger academics, so mid-level academics are suffering.... There's been no money, no salary increases for so long, so it's been hard to get cherries or plums. Now with the chairs, people are going to a lesser university, get an offer, then go back to their university to match the offer. It's nothing other than blackmail.

Small universities are losing professors to the larger universities in central and western Canada because of the salary differentials and research opportunities.

Another inequity with the Canada Research Chairs Program concerns the remarkably low number of women who have been awarded research chairs since its inception. Last May, an independent audit of the program found that the number currently stands at only 15.1 per cent. This is an embarrassingly low number, especially compared with the fact that 61 per cent of the humanities and social science research grants awarded to doctoral fellows last year by the Social Sciences and Humanities Research Council of Canada went to women. This is one more inequity that must be carefully looked at.

Another problem has emerged that may have repercussions on the availability of research funding. This fall, the Canadian Institute of Health Research decided to end a program that provides salary support for mid-level and senior researchers. As a consequence of this decision, it may even be more difficult for researchers to obtain funding under the Canada Research Chairs Program, as there may be an increase in the competition among researchers for the positions.

The Canadian Foundation for Innovation is another research grant council that has equity problems beyond those found in its funding formula. In announcing the creation of the CFI in 1997, former Finance minister Paul Martin said:

Investment decisions will be made solely by a board of directors, the majority of whom will be drawn from the private sector and the research and academic communities.

While this is true, no stipulation was made as to how regional representation would be dealt with on the board. That oversight has been to the detriment of Atlantic Canada's universities, as the region has been sorely under-represented among the members of the board with only two members from Atlantic Canada.

There are other serious problems concerning post-secondary education in our country, of which I am sure all honourable senators are aware. During his time as Finance minister, Paul Martin cut funding for post-secondary education dramatically, as he directed it to become part of the annual CHST payments to the provinces. Between 1994-95 and 1998-99, the federal government cut CHST entitlements by \$6.2 billion, or about 33 per cent.

• (1830)

This money is awarded on a per capita basis, not per student, which hurts institutions such as Memorial University of Newfoundland and Labrador. For example, it is located in a province of only about half a million people. However, it boasts an enrolment of over 16,000, making it the largest university in the region.

Cuts in CHST payments due to a shrinking overall population has hurt the university, as it does not take into account how high its enrolment may be or how high it may grow in the future.

As a member of Parliament, Mr. Martin's record is not any better. In May 2002, despite speaking favourably about it in the press, Mr. Martin voted against a motion put forward in the House of Commons by John Herron, an MP from the riding of Fundy—Royal, to alleviate student debt by introducing a tax credit based on 10 per cent of the principal of a student loan for 10 years, provided the person remain in Canada. That was a relatively small initiative that would have had a big impact on the lives of students, but it did not receive the support of Mr. Martin.

By the way, honourable senators, the government still taxes both bursaries and scholarships at a level over \$3,000. I consider that to be unconscionable.

The lack of research funding for small universities poses a serious threat. We urge the government to address these problems so that universities have more opportunities.

Dr. Kelvin Ogilvie, former President and Vice-Chairman of Acadia University, perhaps described education best when he said that "education, ultimately, is the key to a successful society."

On motion of Senator Moore, for Senator Losier-Cool, debate adjourned.

ROLE OF CULTURE IN CANADA

INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Gauthier calling the attention of the Senate to the important role of culture in Canada and the image that we project abroad.—(*Honourable Senator Banks*).

Hon. Tommy Banks: Honourable senators, I rise at the first opportunity, having gotten this far in the Order Paper in the last several weeks, to speak to this important inquiry of Senator Gauthier in which he talks about arts, culture and aesthetic creativity, performing arts, literature and architecture. These are the things by which we are judged, by which all societies in the end are judged. They are the things on which we will be judged by history. They are the things by which we are known in the world and by which we are largely judged in the world today.

We do not know much about the captains of industry in the great civilizations which have preceded us, but we know about the sculptors of Easter Island. We know about Mozart, Rembrandt and Cole Porter.

It is not that the captains of industry of those times were not important — they were important and they are important today. Without them, not much of anything would happen. However, it is by our culture that we are known. It is by our culture that we will be remembered in history. The images in our minds of the

very earliest people, paintings on the walls of caves and our memories of ancient empires — and of current ones — are our cultural images. Cultural images matter in a way that is different from how everything else matters in our country and in the world's view of our country.

We all know about the quality of life arguments having to do with arts and culture. We know that because on the front page of every glossy brochure that is published by every city, town, village and country that wants to attract investment to it are pictures of ballet dancers and symphony orchestras, alongside the pictures of skyscrapers, factories, smokestacks and rail yards. Without those things, investment cannot be attracted and maintained. They are the important things about culture in the broadest sense of culture.

However, there is another way in which they are important, another role which they play. I refer to the economic importance of the arts and cultural industries. It is not the most important aspect of the arts and cultural industries, but it is an important one. The arts and cultural industries are a very substantial net contributor to our GDP.

Governments are beginning to figure this out, even our government. They were led by the American government which, after many years, was awakened by the irrefutable statistics of the economic importance of their arts and cultural industries. They do not call them that; they call them show business. They could no longer ignore the fact that, for the past 20 years, their largest export commodity was airplanes. Their second largest export commodity was not cars, computers or information technology; it was show business. Some Canadian governments, including ours, are just beginning to wake up to the economic as well as intrinsic importance of the arts.

When we think about the arts, there are some things that we need to remember about the arts in addition to their intrinsic value because the blunt fact is that the arts and cultural industries are among Canada's largest industrial sectors. Taken as a manufacturing industry, which is how we must consider it because that is how Statistics Canada treats it in light of its taxation regime, the arts and cultural industries are among the largest employers of any manufacturing industrial sector in Canada. I apologize for the statistics and for the age of them, but it is important that I compare apples to apples. It now earns nearly \$30 billion per year. That is more than petroleum refining, coal, rubber, plastics and textiles combined.

In 1991, the most recent year for which I have directly comparable figures for all industrial sectors from Statistics Canada, the arts and cultural sectors contributed 2.99 per cent of the GDP of Canada. That does not sound like a lot, until one realizes that the agricultural sector contributed 2.3 per cent and the telecommunications sector contributed 2.7 per cent. The mining industry contributed 1.2 per cent, while logging and forestry contributed 0.6 per cent.

That 2.99 per cent amounts to about 4.8 per cent of our gross national product, or nearly \$30 billion.

There are nearly 900,000 workers in these industries. I am not talking about part-time folks. I am talking about full-time, employed, tax-paying workers in the cultural sector. That is about seven times the entire workforce of the forest products industry. It is 6.9 per cent of the total employment in Canada.

Between 1989-90 and 1993-94, the Canadian GDP increased by 8.6 per cent. In that same period, the cultural sector's contribution increased by 9.9 per cent. Total employment in Canada decreased slightly in that period. However, in the cultural sector it increased by 5.5 per cent.

The cost of creating a new job in light industry is about \$100,000. In heavy industry, it is about \$200,000. In the arts and cultural industries, it is about \$20,000.

• (1840)

People in the arts are mostly driven to do what they do, and the industry rewards them very efficiently. Why would people do something at which they earn far less money than they could otherwise? It is because the world is changing profoundly. One of the ways in which it is changing is that people want jobs of which they can be proud every day, in which they demonstrate every day their individual abilities, in which they have a direct sense of personal worth. Those are exactly the kinds of jobs that the arts and cultural industries offer.

These people and the places and the businesses in which they work — that is what they are, businesses — are not whimsical distractions. They make significant contributions, not only to our quality of life but also to the economic health of our towns, cities, provinces and country. It is not just a place where indulgent artistes pursue their personal fantasies. It is a labour-intensive, efficient, lean industry with a proven and increasing market.

The most important aspects of the arts and cultural industries are the intrinsic ones because, however we treat the arts, they will always be a major force in any civilized society. When man first discovered how to use fire, there was already painting and dance. The ancient Greeks wrote plays that we still perform today. We listen and rejoice these days to music that was first performed only for the ancient kings and queens. When oil was finally put to a productive use, the opera houses of Europe were already centuries old, and are still in use today.

The arts change but essentially they are always the same. They are the means by which we communicate our highest and most noble ideas. They have survived every scourge known to man and in many cases they have been instrumental in effecting positive world changes. They will continue to survive because humanity's need for self-expression, creativity and beauty will remain, however much the externals of our world may change.

We must think of the arts in those ways, including both the intrinsic and the economic. We must ensure that the arts thrive and prosper in our country. If we show our confidence and our belief that the arts are significant to and vital in our society, our investment of interest, time, money and effort will come back to us many times over. As a result, no matter what economic or social transitions we face, the spirit, soul and vitality of our country will thrive.

On motion of Senator LaPierre, debate adjourned.

UNITED STATES BALLISTIC MISSILE DEFENCE SYSTEM

MOTION RECOMMENDING THE GOVERNMENT NOT TO PARTICIPATE—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Roche, seconded by the Honourable Senator Plamondon:

That the Senate of Canada recommend that the Government of Canada refuse to participate in the U.S.-sponsored Ballistic Missile Defence (BMD) system, because:

1. It will undermine Canada's longstanding policy on the non-weaponization of space by giving implicit, if not explicit, support to U.S. policies to develop and deploy weapons in space;
2. It will further integrate Canadian and American military forces and policy without meaningful Canadian input into the substance of those policies;
3. It will make the world, including Canada, not more secure but less secure.—(*Honourable Senator LaPierre*).

Hon. Laurier L. LaPierre: Honourable senators, I am sorry that it is late. I want to speak because, if I do not speak tonight, I will not be able to do so before the incarnation, reincarnation, expulsion or whatever it is that will happen on November 7.

Senator Roche moved on September 17, 2003, that the Senate of Canada recommend that the Government of Canada refuse to participate in the U.S.-sponsored Ballistic Missile Defence — known as BMD — system. He gave three fundamental reasons that he developed very well, and which you can read in Hansard. I agree with those reasons that Canada should not go into the American tent on this issue. We do know for a fact that the United States government has told the world that this missile system would evolve over time. It is, therefore, inevitable that there will be weapons in space.

May I remind honourable senators that the *Ottawa Citizen* began a series of articles on Sunday, October 9, by David Pugliese, in which he related the entire development of the missile system since 1975. In case there are any doubts in your minds, honourable senators, let me remind you that in April 2003 the United States Air Force Secretary, James Roche, declared that war in space has begun. Further, in December 2002, President Bush said that these capabilities will add to American security and serve as a starting point for improved and expanded capabilities.

All of this to say, honourable senators, that it is naive to think and to propagate the notion that the United States is not determined to militarize space. I am often told by my friends: "Laurier, do not get carried away again. It will take years to militarize space, if that is the goal of the United States government." My interlocutors, of course, reject this idea.

They do so, honourable senators, at the peril of our country, a country that will be incapable of extricating itself should it enter into the tent that is being described to us as nothing other than a place of discussion about defence from unfriendly missiles.

Let us not kid ourselves on these matters. Honourable senators, it seems to me that we need to ask ourselves the question: Do we want to transform space into a military zone from which we, with our ally and partner, can attack anyone at will? Is this goal and aim part of the values of the Canadian people? I do not think so. However, I do believe that the democratic fervour of our people and that of the American people will not permit this to happen, but it is better to be wary of tempting fate.

Furthermore, we must not enter the tent of militarization of space because we cannot enter it with our own agenda, one that would say, "Listen, we will go with you so far down this road and not an inch further." This would not be acceptable to the United States to enter their tent, and rightly so.

Honourable senators, there is nothing to negotiate. The policy is already in place. It only awaits its full realization, so why enter the tent? Common sense and the world will realize that the very fact of entering, sitting down and talking is a statement of agreement; an agreement not on Canada's agenda but on the U.S. agenda. Therefore, we will be there to stay. Let us not deceive ourselves about that. It would be wise for Canada to stay out.

As a Canadian, I do not want my country and my people to be drawn even more closely into the vortex of American militarism and unilateralism. I have absolutely no doubt that Canadians do not want that. They know that the same position that the government took over the Iraq affair will no longer be possible after entering the tent. We shall not be free to do as we wish. About that, there is no doubt. It is designed to make America more secure in the presence of the reality of terrorism, and the

proliferation of arms of mass destruction and possible attacks on American people. Senator Roche went to great lengths to explain that, instead of making us all more secure, this missile defence system will make us less secure.

It is my view, for what it is worth, that Canada has a special mission in the world, and it is not to put missiles in space. Our mission is to lower, through peaceful means, the violence that is synonymous with the war on terror.

• (1850)

What we need is a coalition of the committed, a coalition made up of countries that realise. Arthur Koestler wrote in *Darkness at Noon* that homicide committed for selfish motives is a statistical rarity in all cultures. Homicide for unselfish motives is the dominant phenomenon of man's history. The tragedy is not an excess of aggression, but an excess of devotion. It is loyalty and devotion that makes the fanatic.

In other words, honourable senators, fanaticism is the reason for terrorism. What fans the fanaticism of the terrorists of so many on the planet is poverty, isolation, wrongs not redressed, inequality, fear of being ignored, the perception that others can steal in order to lord it over the marginalized, and hunger. The list is endless.

Honourable senators, it is time for us to create a new coalition, a coalition of the committed, those who would be committed to accepting sustainable development as a fundamental human right and to increasing the security of the planet by becoming more and more a defender of cultural diversity; by launching a universal dialogue on the acceptance of universal diversity; by initiating our young people to the value of service, contact and linkage and so many other things; and by making our country a leader in the developing world. This we shall do by having a plan of action that is realizable and enjoyable.

I could go on, but I understand and I can feel from the vibrations that this all sounds so soft, so impractical, so long to reach effective, accountable results and ever-so mushy. However, let me remind you, honourable senators, that love is also mushy.

On the occasion of his 70th birthday, Sir Wilfrid Laurier was in London, Ontario, a month after the end of the war and a few months before he died, where he spoke to young Liberals. He told them:

Banish hate and doubt from your life. Let your souls be ever open to the promptings of faith and the gentle influence of brotherly love. Be adamant against the haughty, be gentle and kind to the weak. Let your aim and purpose, in good report or ill, in victory or defeat, be so to live, so to strive, so to serve as to do your part to raise even higher the standard of life and living...

I rest my case.

On motion of Senator Graham, debate adjourned.

ILLEGAL DRUGS

REPORT OF SPECIAL COMMITTEE—INQUIRY— DEBATE SUSPENDED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Nolin calling the attention of the Senate to the findings contained in the Report of the Special Committee of the Senate on Illegal Drugs entitled "Cannabis: Our Position for a Canadian Public Policy", deposited with the Clerk of the Senate in the First Session of the Thirty-seventh Parliament, on September 3, 2002.—(*Honourable Senator Banks*).

Hon. Tommy Banks: Honourable senators, I rise to speak to the Report of the Special Committee of the Senate on Illegal Drugs entitled "Cannabis: Our Position for a Canadian Public Policy."

It was my honour to be a member the Special Committee on Illegal Drugs that was chaired so ably by Senator Nolin whose careful attention to objectivity and rigor was a pleasure to see and to be directed by.

Honourable senators, your committee conducted a rigorous, objective and exhaustive analysis of the problems associated with the health and physiological and psychological effects of cannabis use and sale in Canada. We tried to eliminate prejudices, moral judgments and anecdotal evidence that have accumulated for close a century. They have too often crept into the discussion about the adoption or reform of laws in this regard.

The conclusions and recommendations contained in our report are based on an objective analysis of a series of scientific studies done in Canada, the United States and Europe and on the basis of input from 234 witnesses from Canada, the United States and many countries in Europe.

It is now, as Parliamentarians, senators, citizens and parents that we must make a decision. Since last September, Canadians across the country have been intensively debating the national policy on cannabis and they will continue to do that based on Bill C-38.

I am convinced that this report will continue to provide insightful information for members of this house and the other place, and will greatly contribute to a better understanding of the various and complex issues surrounding this important bill.

Honourable senators, this report is over 680 pages, not counting the bibliography and the appendices. There are 11 recommendations in this report. The one that is most titillating and sexiest and has attracted so much interest from the press is the sixth recommendation.

I have the temerity to suggest that our recommendations were listed in what we believe to be approximately the order of their importance. No one has paid any attention to the other 10 recommendations. I hope that more people will.

I will now comment on remarks that have been made about the issue of addiction and dependence in relation to cannabis. I refer, specifically, to Senator Morin's comment that Dr. Bill Campbell, who was the president of the Canadian Society of Addiction Medicine contended, that cannabis addiction turns people into drug slaves who are absolutely incapable of doing without it.

Dr. Campbell appeared as a witness before our committee. He told us that "marijuana is known to be addictive," and that, "the rate varies between 5 and 10 per cent." Members of the committee, after hearing those 234 witnesses over all those many months, have arrived at the conclusion that the contention of Dr. Campbell is not true. First, I would point out that there is much misunderstanding generated by the misuse of such terms as "addiction" and "dependence," when discussing the effects of certain drugs.

In our report, the World Health Organization definitions were used. The WHO described addiction as a general term referring to the concepts of tolerance and dependency. According to the World Health Organization, addiction is the repeated use of a psychoactive substance to the extent that the user is periodically or chronically intoxicated, shows a compulsion to take the preferred substance, has great difficulty in voluntarily ceasing or modifying substance use, and exhibits determination to obtain the substance by almost any means.

The World Health Organization describes dependence as the state in which the user continues the use of the substance, despite significant health, psychological, relational, familial or social problems and threats and dangers. Dependence is a complex phenomenon that may have genetic components.

The expression "drug addiction" is found everywhere. It is found in legislation, information documents and in everyday language. Since 1963, the WHO has recommended that we abandon that expression because it is imprecise and that we refer instead to states of physiological and psychological dependence.

• (1900)

In our report, we arrived at the following conclusion:

In our view, it is clear that the term addiction, severely criticized for its medical and moral overtones, is inadequate to properly describe the different forms of at-risk and problem users.

Heavy use of cannabis can result in dependence requiring treatment; however, dependence caused by cannabis is less severe and less frequent than dependence on other psychotropic substances, including alcohol and tobacco.

A research study entitled "The Irrelevance of Drug Policy" by P.D.A. Cohen and H.L. Kaal, which examined the use of cannabis in the populations of Amsterdam, San Francisco and Bremen, found that no regular cannabis users in that study were regular users of other substances.

On the gateway hypothesis, our report clearly contends that if it is true that the use of substances such as cocaine and other drugs and hallucinogens develops almost necessarily out of prior use of marijuana, it also develops out of the use of other substances such as nicotine, alcohol or coffee, which are more gateways to a trajectory of drug use, statistically, than cannabis.

A statistical correlation does not establish, or even suggest, a causal relationship. If it did, we would be able to say that 99.9 per cent of users of cocaine drank coffee; therefore, drinking coffee causes cocaine use. Maybe it does.

Our report also states that we should, first, define our terms. The stepping stone theory holds that cannabis use inevitably leads to the use of other drugs. In this theory, cannabis use would lead to neurophysiological changes affecting in particular the dopamine system — which is also known as the reward system — and would create the need to move on to other “stronger drugs.”

This theory, in our view, has been completely dismissed by research, and we share that conclusion with several international bodies from whom we heard, whose reports we read, who appeared as witnesses before us and who have been doing drug research. For example, in 2001, evidence was presented to the United Kingdom’s Home Affairs Committee Inquiry into Drug Policy as follows:

The stepping-stone theory has proved unsustainable and lacking any real evidence base. The “evidence” that most heroin users started with cannabis is hardly surprising and demonstrably fails to account for the overwhelmingly vast majority of cannabis users who do not progress to drugs like crack and heroin. The stepping-stone theory has been dismissed by scientific inquiry. The notion that cannabis use “causes” further harmful drug use has been, and should be, comprehensively rejected.

In other words, honourable senators, cannabis is not — and we found this to be the case — a gateway drug.

As to the point about smoking cannabis, there is no question as to its danger, and that is referred to at length in our report. Smoking is bad — smoking anything is bad — and the tar content of cannabis makes it more dangerous than almost any other kind of tobacco use in respect of respiratory problems. That is referred to often, directly and heavily in our report, which never recommends that anyone ought to smoke or otherwise use cannabis or any other drug.

Tobacco smoking causes diseases of the lungs and respiratory system. Cannabis smoking causes diseases of the lungs and respiratory system, and it would cause it faster if the same amount of smoke were inhaled. Most marijuana smokers do not smoke a pack a day.

On the carcinogenic potential of cannabis itself, however — not the smoke and not the tar that comes from the leaves — our report makes clear, and I believe it supports the contention, that there is a distinction between the carcinogenic effects of cannabis smoke, a potential source of lung cancer in particular, and the mutagenic effects of THC on cells. According to the majority of witnesses and authors from whom we heard, THC itself does not appear to be carcinogenic. Cannabis smoke, like tobacco smoke, increases the incidence of cancerous tumours, but cannabis by itself has no toxicity. Experiments have been conducted on mice with preposterously large doses of THC with no demonstrable toxic effect. The data available seems to indicate that the consequences of chronic and intense cannabis use, by which I mean the smoking of several joints a day for several years, are at least as dangerous as those of cigarettes in terms of their carcinogenic risks for the respiratory tract, as well as of the mouth, tongue and esophagus. However, marijuana users do not smoke the equivalent of a pack a day. Conducting control studies is largely recognized as a research priority in this field, and we must do that.

On the subject of driving motor vehicles under the influence of marijuana by itself, I have found, and others have said, that it is likely that cannabis by itself makes its users, if anything, more cautious, partially because they are consciously aware of their deficiencies and they compensate by reducing their speed — sometimes to absurd rates — and by taking fewer risks, but the combination of marijuana and alcohol causes an exponential increase in the risk of impaired driving and ought to be treated with great seriousness. That is referred to, again, at length in our report, which recommends the greatest possible caution.

On the contentious subject of the possibility of impairment in such areas as memory, the review of research findings shows that during the past 30 years researchers have found, on the few occasions where they have found any measurable difference, minor cognitive differences between chronic marijuana users and non-users, and the results differ substantially from one study to another. Based on this evidence, it does not appear to be reasonable to presume that long-term marijuana use causes any significant, permanent, irreversible harm to intellectual ability. Even animal studies, which show short-term memory and learning impairment with extremely high doses of THC, have not produced evidence of permanent damage. The damage has always been shown to be reversible. It is our view that cannabis may be viewed as posing a significantly lower threat to cognitive function than other psychoactive substances such as alcohol.

The same is true for sexual potency. In one study, the authors of which we heard from, men spent 30 days in a closed laboratory where they smoked up to 20 cannabis cigarettes a day. Although some decrease in sperm concentrations and sperm motility was detected, the variations were not outside the normal range, and the slight differences that did occur were reversed when the experiment ended, taken by the same measurements. There is still hope.

There are no epidemiological studies showing that men who use cannabis have higher rates of infertility than those who do not, nor is there evidence of diminished reproductive capacity among men in countries where cannabis is in common use.

Finally, Senator Morin referred to an editorial in a British medical journal of November 2002, which I believe he said showed that marijuana increases the risk of schizophrenia in teenagers by 30 per cent.

The Hon. the Speaker pro tempore: I regret to inform Honourable Senator Banks that his time has expired.

Senator Banks, are you asking for leave to continue?

Senator Banks: With the indulgence of the house, I will take less than five minutes to complete my remarks.

Debate suspended.

• (1910)

[Translation]

BUSINESS OF THE SENATE

COMMITTEES AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, could we have agreement to authorize committees to sit at 7 p.m., even though the Senate may then be sitting?

[English]

The Hon. the Speaker pro tempore: Is leave granted, honourable senators?

Hon. Senators: Agreed.

ILLEGAL DRUGS

REPORT OF SPECIAL COMMITTEE—INQUIRY— DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Nolin calling the attention of the Senate to the findings contained in the Report of the Special Committee of the Senate on Illegal Drugs entitled “Cannabis: Our Position for a Canadian Public Policy”, deposited with the Clerk of the Senate in the First Session of the Thirty-seventh Parliament, on September 3, 2002.—(*Honourable Senator Banks*).

Hon. Tommy Banks: Honourable senators, I ask for leave to continue.

[Senator Banks]

The Hon. the Speaker pro tempore: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Banks: Senator Morin, if I recall correctly, said that the article in the *British Medical Journal* stated that marijuana increases the risk of schizophrenia in teenagers by about 30 per cent. In my reading of the article, it does not state that fact. It alludes to an older study that was done in 1969 with Swedish conscripts that showed those results, but the *British Medical Journal* editorial then states:

This large effect is surprising and not yet reflected in an increased incidence of schizophrenia in the population.

The *British Medical Journal* editorial then goes on to state:

Some observations in certain studies provide some support for the hypothesis that cannabis may act as a risk factor for this disorder.

By which they mean schizophrenia.

However, the overall weight of evidence is that occasional use of cannabis has few harmful effects overall.

The Review of the Research Findings also notes the findings of Mr. B. Roques, of France, who states in his 1990 book, which is entitled *La dangerosité des drogues*, that no mental pathology directly related to the overuse of cannabis has been reported, a fact which distinguishes this substance from psychostimulants such as MDMA, cocaine or alcohol, heavy and repeated use of which can give rise to characteristic psychotic syndromes. Similarly, cannabis does not seem to precipitate the onset of pre-existing mental dysfunctions such as schizophrenia, bipolar depression, et cetera.

In conclusion, honourable senators, the members of the committee and the research staff have never had an anti-science bias. I have a lot of evidence here by which I would hope to convince you of that, but I will bypass it.

The third volume of this report contains a extensive bibliography which refers to the exhaustive historical, legal, scientific, medical and epistemological studies on cannabis, on whose shoulders we stood and whose evidence we heard. Chapter 3 of our report indicates that the principles of science, as well as of ethics and governance and criminal law, constitute the main guiding principles that we have used to make what we believe are intelligent and innovative recommendations in order to reform our national cannabis policy.

Our report clearly states that scientific knowledge cannot replace either reflection or the political — decision-making process. It supports that process. We consider that its greatest contribution to public drug policy is in doing so.

I want to read one last thing from Dr. David Marsh, who appeared before the Standing Senate Committee on Social Affairs, Science and Technology. He is the Clinical Director of Addiction Medicine at the Centre for Addiction and Medical Health at the University of Toronto. Dr. Marsh said:

The issue of incarceration brings me back to the earlier question of the cannabis reform bill. One of the benefits of the decriminalization of cannabis is that we would no longer be subjecting mainly young men in their late teens and early twenties to a lifelong criminal record for the possession of a small amount of cannabis.

I talked about the centre's position on cannabis reform earlier. My personal opinion was changed by Senator Nolin's report. I would think that there are other benefits to moving more radically toward legalization of cannabis and removing the criminal involvement in production and distribution of cannabis.

Honourable senators, please read this report. Nowhere does it recommend that anyone smoke a single joint of marijuana. Nowhere does it say anything more than that we can no longer hide behind the notion that we do not know enough. This report says that we have to find out enough. The first recommendations of this report talk about the urgent necessity for research so that we can make a fact-based, sensible, common-sense national drug policy, which is absent in this country right now.

If honourable senators do not read the report, please read the other 10 recommendations, other than the ones that *The Sun* grabbed on to, with all disrespect to *The Sun*.

Senator Stratton: I have one simple question. Would the honourable senator take a question?

Senator Banks: If there is time, absolutely.

Senator Stratton: Have you ever inhaled?

Senator Banks: As the senator knows, I have never exhaled.

Hon. Yves Morin: Honourable senators, I want to congratulate Senator Banks on this well-researched speech. I have three questions for him.

First, does the honourable senator think that regular usage of cannabis — and by this we mean smoking — is a healthy habit?

Second, I think we both agree that it does have a deleterious effect on young men, young boys.

Third, if common usage is the basis — common because it is so frequent — for legalization of the product, I think we should move to legalize ecstasy, which has now surpassed cannabis in Ontario as the drug of more common usage. We now find more people with small amounts of ecstasy in their pocket or in their car. That is a fact. The health effects of ecstasy are as doubtful as the health effects of cannabis. Maybe we should conduct a similar study on ecstasy.

Senator Banks: We should begin a study on psychotropic substances altogether because we do not know enough about any of them. However, we do know more about the health effects and the psychological effects and the psychotropic results of the use of cannabis than we do about ecstasy. I believe that by direct comparison, never having used ecstasy but having seen the results of people having used it, the effects of its use are more deleterious to public health than marijuana.

The answer to the first question is no. The regular usage of cannabis is unhealthy. The regular smoking of cigarettes is unhealthy. The regular consumption of alcohol is unhealthy in any degree. The regular use of coffee is unhealthy, if it is to excess. There is nothing in the report to suggest that there is any health benefit or that there is anything other than risk from the use of cannabis or any other psychotropic substance, and the report recommends strongly against those things.

The most important question of the three posed by the honourable senator was this: Should we do more research? Absolutely, on everything that people smoke or drink or stick in their arms. The more we know about these substances, the more able we will be to arrive at a reasonable, practical, knowledge-based national drug policy.

Hon. Joan Fraser: The statistics Senator Banks cited for various studies tended to refer to the effect of marijuana on men. Women do not have the same physiology as men, including their brains.

Senator Morin: They are better.

Senator Fraser: I agree with Senator Morin on some occasions, at any rate.

Might I suggest that as you continue your effective advocacy, you include the strong recommendation that research be conducted to determine the effects of marijuana in particular, cannabis in particular, and psychotropic drugs on women in particular and not just on young men. Women also get schizophrenia, for example.

• (1920)

Senator Banks: The only report of which I am aware that concentrated only on men was the one that dealt with male sexual potency. That is the only one to which I referred because there was a question about sexual potency in males. It is my recollection and belief, although I will check on this to make sure, that most if not all of the other reports submitted to us from witnesses whom we heard were based on studies of the general population that would certainly have included women. I cannot imagine that the following people have not dealt with women in their studies: Professor Line Beauchesne, Professor of Criminology at the University of Ottawa; Professor Peter Cohen, University of Amsterdam; Professor Benedikt Fischer, Department of Public Health Sciences at the University of Toronto; and Ms. Hélène Goulet, Director General of the Healthy Environments and Consumer Safety Branch at Health Canada.

When we were listening to the witnesses, with the exception of the report on male sexual potency, my understanding at all times was that we were talking about approximately equal numbers of men and women.

Senator Fraser: Senator Banks, I think I also heard you refer to the incidences of schizophrenia among young men. Be that as it may, I hope that you are right about the assumptions of the learned scientists that you mentioned, but the sex of a researcher does not necessarily determine the outcome of that person's research.

Hon. John G. Bryden: Honourable senators, I would like to comment briefly in support of Senator Banks' comments in respect of Senator Nolin, Chair of the committee. It was a major project, and that is evident from the results. I want Senator Nolin to know that if he could prevail upon senators to allow me to make my speech on Bill C-41, he would receive his retroactive pay.

On motion of Senator LaPierre, debate adjourned.

[Translation]

APPROPRIATION BILL NO. 3, 2003-04

FIRST READING

The Hon. the Speaker *pro tempore* informed the Senate that a message had been received from the House of Commons returning Bill C-55, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004.

Bill read first time.

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

On motion of Senator Day, bill placed on the Orders of the Day for second reading two days hence.

ASSISTED HUMAN REPRODUCTION BILL

FIRST READING

The Hon. the Speaker *pro tempore* informed the Senate that a message had been received from the House of Commons with Bill C-13, respecting assisted human reproductive technologies.

Bill read first time.

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

On motion of Senator Morin, bill placed on the Orders of the Day for second reading two days hence.

[Senator Banks]

NEGOTIATIONS WITH THE INNU (MONTAGNAIS) OF QUEBEC

INQUIRY—ORDER STANDS

On the Order:

Resuming debate on the inquiry of the Honourable Senator Gill calling the attention of the Senate to the issues of the common approach (negotiations) with the Innu (Montagnais) of Quebec, Quebec and Canada with respect to the current discussions.—(*Honourable Senator Watt*).

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I know Senator Watt is interested in speaking in connection with this inquiry, raised by Senator Gill, which he considers very important. Senator Watt is in the Fisheries Committee at this time, however. I believe we could start the clock again so that the Honourable Senator Watt may prepare himself properly.

The Hon. the Speaker *pro tempore*: Is it your pleasure, honourable senators, to adopt the motion?

Order stands.

THE SENATE

MARITIME HELICOPTER PROJECT— MOTION TO RECEIVE BRIEFING IN COMMITTEE OF THE WHOLE—ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Kinsella:

That the Senate resolve itself into Committee of the Whole in order to receive Jane Billings, from the Department of Public Works and Government Services, and Alan Williams, from the Department of National Defence, for a briefing on the procurement process for the Maritime Helicopter Project in light of developments since their appearance before Committee of the Whole on October 30, 2001.—(*Honourable Senator Robichaud, P.C.*).

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, the motion before us would be a repetition of an exercise we held here in Committee of the Whole with the same witnesses. I believe that at one point we had said that these witnesses were perhaps not the best ones to call, so I would like to go back to day one so that we can re-examine the issue. I move that the order stand until the next sitting of the Senate.

The Hon. the Speaker *pro tempore*: Is it your pleasure, honourable senators, to adopt the motion?

Order stands.

[English]

FOREIGN AFFAIRS

COMMITTEE AUTHORIZED TO STUDY POLICY ON ISRAELI-PALESTINIAN CONFLICT

Hon. Eymard G. Corbin, pursuant to notice of October 2, 2003, moved:

That the Standing Senate Committee on Foreign Affairs undertake the examination of Canada's policy regarding the Israeli-Palestinian conflict and report no later than April 30th, 2004.

He said: Honourable senators, I would like to preface my remarks by saying that, like honourable senators, I am vividly conscious of tragedies occurring in other regions of the world that do not leave you or me feeling indifferent, I am sure. However, the Israeli-Palestinian conflict has been ongoing, it seems, forever. It appears that Canada has been reticent or overly discreet in conjoined efforts to help bring peace and stability to that area.

Honourable senators, let me be clear: the purpose of my motion is to ask the Standing Senate Committee on Foreign Affairs to ascertain the current Canadian policy process with respect to the resolution of the Israeli-Palestinian conflict, with a view to making recommendations on how this policy could be improved. I am not suggesting a fault-finding exercise, and this is not an invitation for parties to vent blame. Rather, I am suggesting that we imbue ourselves with the spirit of openness and not closure.

The focus of the committee's work would be confined to Canada's policy position and not to the variegated history of the conflict. The Minister of Foreign Affairs should be invited to appear before the committee to explain what he is doing with either side to the conflict or any other agency, including the United Nations.

• (1930)

Currently, my reading of the public perception is that Canada's involvement on the issue appears soft. I stand to be corrected, of course, if that reading is not correct. It looks as though the United States and the European Union, and sometimes Russia, are the only real players. It appears that Canada is simply marking time in the shadow of the positions of others. What has become of the third way? The minister should explain why we are not more creatively involved. Or, on the other hand, the minister should give us the facts if, indeed, we are creatively involved.

The committee, after hearing witnesses and arriving at its own consensual evaluation, would then report back to the Senate by way of recommendations to the government. The timing, in my opinion, is excellent as the committee will be reporting soon on its examination of the fluctuating and appreciating Canadian dollar and its impact on trade productivity and employment.

[Translation]

It is important that the citizens of Canada — a country respected for its impartiality, its sense of fairness, its Charter of Rights and Freedoms, its generosity in its contributions made and in human lives sacrificed to end conflicts in faraway countries and establish lasting peace — understand, not as docile and passive children but rather as informed people, why and how our foreign

policy was developed, to ensure the broadest consensus possible for this policy.

To achieve such a consensus, it is essential that the widest possible range of Canadians, each according to his or her knowledge and skills, gets involved in the development of this policy. I think the Senate Committee on Foreign Affairs must absolutely look into the matter.

I think I can safely say that the vast majority of Canadians are outraged by the unrelenting violence afflicting the State of Israel, Palestine and their populations. That is my concern.

Expressions of condemnation, sympathy or regret are not enough when, on both sides, children are being blown up and innocent victims massacred. We are pleading for a new approach.

When the community of nations hesitates and drags its feet, trying to make itself feel good by passing resolutions that will not be acted upon, Canada must speak out loud and clear and make itself heard above the din of scrums. There is no doubt about it. We must innovate.

I already know from experience that the subject matter I am submitting to you for consideration has the potential to arouse the strongest feelings. I have no other ambition than to determine how and why Canada takes action or fails to do so. Why does it take one course of action rather than another? In this case, choosing not to take action when our action could make all the difference would be utterly irresponsible. Why? Why bring this up? Why now? Why not rely on experts, on career public servants? Why not. Why raise this issue, which is so sensitive that apparently it can only be discussed behind closed doors? I disagree with that approach.

Parliamentarians have the obligation to be concerned about government policy; to provide input into the difficult choices the executive branch must make. If Canada is an enlightened democracy, it is important to make it crystal clear what our policy is on the Israeli-Palestinian conflict and who developed that policy.

It is important for Parliament to be involved in developing this policy. It is important that Parliament have confidence in the examination of this issue by any party. It is important to know who our allies are in our efforts to promote peace in that part of the world.

Canada's traditionally respected role in this type of initiative for promoting peace will reinforce the image the rest of the world generally has of our country and of its credibility. I have learned in life that there is bias in any thorny issue or difficult situation. Otherwise, we would not talk about it for ages. I know that at the end of the day, good will is much more powerful than the horrors of violence. It is in a spirit of impartial objectivity, if such a thing still exists, that I present this proposal and ask you to consider it. Please be guided by reason and consider allowing the Committee on Foreign Affairs to study this issue and report on it as soon as possible.

[English]

Honourable senators, I would like to read to you from the *Times* literary supplement of October 10, 2002, what is essentially an ad. in memoriam to Edward W. Said, 1935-2003. It was published by Harvard University Press. I quote from Edward Said:

I take criticism so seriously as to believe that, even in the midst of a battle in which one is unmistakably on one side against another, there should be criticism, because there must be critical consciousness if there are to be issues, problems, values, even lives to be fought for. Criticism must think of itself as life-enhancing, and constitutively opposed to every form of tyranny, domination and abuse. Its social goals are non-coercive knowledge produced in the interest of human freedom.

That is a quote from Edward Said's book *The World, The Text and The Critic*.

I express the hope to honourable senators that it will be in that spirit — if the Senate so allows — that the Standing Senate Committee on Foreign Affairs will proceed with the examination of the question that I have put before you this evening.

On motion of Senator Stollery, debate adjourned.

[Translation]

Hon. Marcel Prud'homme: Honourable senators, I thank Senator Stollery for having asked for adjournment in his name. I had agreed to take adjournment in Senator Nolin's name. I will let the honourable senator take adjournment. I am sure Senator Nolin would have no objection to Senator Stollery asking for adjournment.

[English]

OFFICIAL LANGUAGES

STUDY ON FRENCH-LANGUAGE BROADCASTING IN FRANCOPHONE MINORITY COMMUNITIES—MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT—ORDER WITHDRAWN

On the Order:

That, notwithstanding the Order of the Senate adopted on April 29, 2003, the date for the final report by the Standing Senate Committee on Official Languages on its study of provision of and access to French-language broadcasting in francophone minority communities be extended from October 22, 2003, to December 12, 2003.

Hon. Rose-Marie Losier-Cool: Honourable senators, with leave of the Senate, I ask that this motion be withdrawn from the Order Paper.

The Hon. The Speaker pro tempore: Honourable senators, is it agreed that the order be withdrawn?

Hon. Senators: Agreed.

Order withdrawn.

LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO STUDY FIREARMS ACT

Hon. George J. Furey, pursuant to notice of October 27, 2003, moved:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine and report on regulations made pursuant to An Act respecting firearms and other weapons, Statutes of Canada, 1995, Chapter 39, as contemplated by section 118(3) of that Act; and

That the Committee submit its final report no later than December 31, 2003

Motion agreed to.

• (1940)

NATIONAL SECURITY AND DEFENCE

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Colin Kenny, pursuant to notice of October 27, 2003, moved:

That the Standing Senate Committee on National Security and Defence have power to sit at any time on Monday next, November 3, 2003, even though the Senate may then be sitting, and that Rule 95(4) be suspended in relation thereto.

The Hon. the Speaker pro tempore: It is moved by the Honourable Senator Kenny, seconded by the Honourable Senator Banks, that the Standing Senate Committee on National Security and Defence have the power to sit at any time on Monday next, November 3, 2003, even though the Senate may then be sitting, and that rule 95.4 be suspended in relation thereto.

Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Senator Stratton: No.

The Hon. the Speaker pro tempore: All those in favour of the motion will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker pro tempore: Those opposed to the motion will please say "nay."

Senator Stratton: Nay.

The Hon. the Speaker pro tempore: In my opinion, the yeas have it.

Motion agreed to.

The Senate adjourned to Wednesday, October 29, 2003, at 1:30 p.m.

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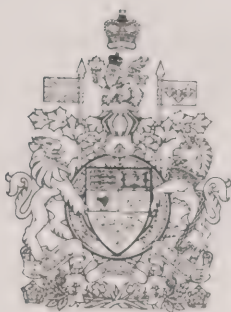
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OFFICIAL REPORT
(HANSARD)

Wednesday, October 29, 2003

THE HONOURABLE DAN HAYS
SPEAKER



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THE SENATE

Wednesday, October 29, 2003

The Senate met at 1:30 p.m., the Speaker *pro tempore* in the Chair.

Prayers.

SENATORS' STATEMENTS

PRIME MINISTER'S TASK FORCE ON WOMEN ENTREPRENEURS

Hon. Catherine S. Callbeck: Honourable senators, this morning the Prime Minister's Task Force on Women Entrepreneurs had the pleasure of releasing its final report.

The Prime Minister established the task force in November of last year to examine the unique challenges facing women entrepreneurs. The task force was also asked to make recommendations as to how the federal government could assist businesswomen so that they can fully contribute to the economy.

In preparation for its report, the task force travelled from coast to coast to coast, visiting all the provinces and the Yukon. It held 38 public consultations in 21 different cities. It heard from 21 federal government departments and agencies about the programs they have to support entrepreneurship.

The response to the task force was overwhelmingly positive. As we conducted our consultations across Canada, many women entrepreneurs applauded the fact that, for the first time, they had an important platform from which to voice their concerns.

Women entrepreneurs are already making a vital contribution to the Canadian economy. According to Statistics Canada, there are more than 821,000 women entrepreneurs in Canada. This represents more than one-third of the self-employed. These entrepreneurs contribute in excess of \$18 billion to the Canadian economy each year.

However, women entrepreneurs have the potential to play a much greater role. Unfortunately, as the task force learned, many barriers prevent them from realizing this potential. Some of the common barriers include: access to capital; access to maternity benefit and other social programs; access to training programs; lack of mentoring and networking opportunities; and lack of good information about government services and programs.

These were some of the main issues and challenges raised during our consultations with women entrepreneurs across the country.

The task force sought to address these issues by proposing concrete measures. This is an important issue for all Canadians, because the challenge is to ensure that all citizens have an opportunity to contribute and to share in the growth of the economy.

AGRICULTURE AND AGRI-FOOD

EVALUATION OF PESTICIDES

Hon. Donald H. Oliver: Honourable senators, I rise today to speak about pesticide use in Canada.

Farmers and foresters alike have been using insecticides and pesticides to protect their crops for generations. As they are knowledgeable about the effects of pesticides on animals and humans, farmers and foresters have taken care to minimize the impact of chemicals on those around them.

The agricultural community relies upon the government to provide enough information to use pesticides safely. However, the recently tabled report from the Commissioner of the Environment and Sustainable Development revealed that the federal government is not providing this information.

The Pest Management Regulatory Agency is the branch of Health Canada responsible for evaluating pesticides. The report of the commissioner revealed the agency must update its evaluation methods, ensure the information it has on each pesticide is complete, and investigate its repeated use of temporary and emergency registrations. Only by implementing these recommendations will Canadians be able to safely use chemical sprays on their gardens and lawns.

Honourable senators, pesticide use in Canada has been growing steadily. In 1970, less than 10 million hectares of agricultural land in Canada were treated with pesticides. In 2000, 30.7 million hectares were treated with herbicides, insecticides or fungicides.

Although these numbers are for farmland, pesticide use in forested areas and even on residential ground is similar. In 2000, 199 million hectares of forest were managed for timber production. Of that, .39 million hectares were treated with either a herbicide or insecticide. Thirty-eight per cent of Toronto's household lawns and gardens are sprayed each year.

• (1340)

Pesticide use is routine and commonplace. Unfortunately, not enough is known about the environmental impact or the possible effects on humans. This lack of knowledge was revealed in the commissioner's report which states:

Health Canada has done only limited research on the health effects of pesticides, despite the federal government's stated priority in this area... Efforts to monitor the health and environmental impacts...are hampered by a lack of information about their use and adverse effects, by an incomplete set of national guidelines for water quality monitoring, and by a lack of suitable methods to measure pesticides.

All pesticides re-evaluated by the current set of standards were found to pose significant health or environmental risks. The commissioner's report even suggested it is likely that some pesticides on the market that have not yet been re-evaluated will also fail to meet today's standards. This is not acceptable.

In conclusion, pesticides provide a relatively inexpensive form of protecting crops against infestations, people against things like West Nile virus, our homes against mildew and our lawns against the ever-present dandelion. However, all of those benefits are useless if the very products we use have long-term, sometimes deadly side effects. Farmers, foresters and gardeners alike should be able to extract the maximum benefit from pesticides. At the same time, any risk to the health of Canadians and any environmental impacts should be kept to a minimum. Ensuring that pesticides are regularly evaluated and properly monitored is the only way to ensure pesticides are not a serious threat to Canadians who use them.

OFFICIAL LANGUAGES

TRIP OF COMMITTEE TO WESTERN CANADA

Hon. Wilbert J. Keon: Honourable senators, I rise to congratulate each and every one of the representatives from the francophone minority communities who appeared before the Standing Senate Committee on Official Languages during its western public hearings last week.

Our committee set out to learn all it could about French-language education in minority communities. Our western trip was the first step of our special study. Our committee was most impressed with the calibre of those witnesses who answered all of our questions in Manitoba, Saskatchewan, Alberta and British Columbia. Our committee found these witnesses to be exceedingly well prepared and their testimony to be enlightening and thought-provoking.

French-language minority communities out West do not always have it easy, we found. I was particularly taken with the plight of those communities in Saskatchewan and, to a lesser extent, British Columbia. It was certainly very clear to me that these francophone communities require a great deal of further support.

On the upside, the remarkable successes achieved both by the Collège universitaire de Saint-Boniface and the Faculté Saint-Jean in Edmonton bode well for post-secondary French-language education in the West. Both institutions boast a diversified faculty

and host a vibrant student community. It is my sincere hope that the new French-language program set up at Simon Fraser University, jointly with British Columbia's francophone association, will finally obtain the funding required to get underway.

All in all, our committee's public hearings were very successful as an outreach initiative.

[Translation]

Honourable senators, I thank honourable Senator Losier-Cool for all her efforts last week. Congratulations!

[English]

I also acknowledge the tremendous respect shown for Senator Gauthier and his efforts over the years. He truly is the hero of the francophones of Western Canada.

ROUTINE PROCEEDINGS

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE

Hon. Michael Kirby: Honourable senators, I give notice that, at the next sitting of the Senate, I will move:

That the Standing Senate Committee on Social Affairs, Science and Technology have power to sit at 3:30 p.m. on Wednesday, November 5, 2003, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

[Translation]

STUDY ON OPERATION OF OFFICIAL LANGUAGES ACT AND RELEVANT REGULATIONS, DIRECTIVES AND REPORTS

REQUEST FOR GOVERNMENT RESPONSE—NOTICE OF MOTION

Hon. Jean-Robert Gauthier: Honourable senators, I give notice that on Thursday, October 30, 2003, I will move:

That, pursuant to rule 131(2), the Senate request the government to provide a detailed and comprehensive response to the Fourth Report of the Standing Senate Committee on Official Languages, adopted on October 28, 2003.

[English]

BANKING, TRADE AND COMMERCE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE

Hon. Richard H. Kroft: Honourable senators, with leave of the Senate, and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Banking, Trade and Commerce have power to sit at 4 p.m. today, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

The Hon. the Speaker pro tempore: Is leave granted, honourable senators?

Senator Prud'homme: No.

[Translation]

Hon. Marcel Prud'homme: Honourable senators, once again, this is a problem. I sit on the Standing Committee on Banking, Trade and Commerce. There are some bills being discussed here that are of the utmost interest to me. What am I to do?

If I refuse leave for this committee, the Senate will be sitting and my committee cannot. The last time, the committee chair consulted me. Today, I learn he will be asking that the committee be authorized to meet during the sitting of the Senate. Senator Robichaud has already asked the same question and I told him that I did not know.

We do not know what Senator Robichaud will do about adjournment. Will he let the Senate continue to sit until 3:30 p.m. or 4 p.m.? We will decide when he lets us now his intentions. For the moment, I will withhold consent for the honourable senator's motion; I can always give it later. However, I will not go to meeting of the Banking, Trade and Commerce Committee if the Senate is sitting, that is certain.

The Hon. the Speaker pro tempore: Do we not have leave, honourable senators?

[English]

The Hon. the Speaker pro tempore: Leave is not granted.

Senator Prud'homme: At this time.

The Hon. the Speaker pro tempore: Is leave granted?

Senator Prud'homme: I say again that the honourable senator could ask again when we arrive at 3:30 so that we may see the intention of Senator Robichaud, and I will probably say yes.

The Hon. the Speaker pro tempore: At this moment, leave is not granted.

LEGAL AND CONSTITUTIONAL AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. George J. Furey: Honourable senators, with leave of the Senate, and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Legal and Constitutional Affairs have power to sit at 3:30 p.m. today, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

In anticipation of commentary from some honourable senators, may I say that I do not understand why it is that when committees make this request in the chamber, they take so much flak and so much heat. Senate committees do not set their own standard times for sitting. Asking for permission to sit while the Senate is sitting is generally done to show respect and courtesy to the witnesses we call to our committee meetings. That is the reason we ask — so that witnesses are not sitting on their hands for two hours waiting for us.

The Hon. the Speaker pro tempore: Is leave granted?

Hon. Marcel Prud'homme: Honourable senators, on the same point, Senator Furey was gracious enough not to mention the names of "some senators," but I am one who insists every time that the Senate should not sit when committees sit. Some day we may have six or seven committees sitting at once, and even the whip will have a hard time mustering a quorum. Either the proposed legislation we have before us is important or it is not. That is the decision we will have to make some day.

• (1350)

I want Senator Furey and others to understand that I am being as diplomatic and serious as I can be. If the rules are wrong, we should change the rules. However, now we are changing the practice. Why do committee chairs gamble and call important witnesses on Wednesday afternoons, when they know that there may be lengthy Senate sittings? It is for the chairs of committees to get their heads together with the leadership and suggest that we forget this tradition of not having committees sitting at the same time that the house is sitting. It makes no sense.

How many more committees want to sit this afternoon? How can we say no to them? I cannot say no to Senator Furey. I am not a member of his committee, since I have a conflict of interest. However, I am a member of the Banking Committee, and if I do not attend the meeting some will say that I am not interested in the work of the committee. If I do attend the committee, then I cannot be present in the chamber. How can you solve this dilemma?

If the honourable senator requires unanimous consent, then I will stay quiet. However, as for the Banking Committee, I would kindly ask my chairman to again put his question around 3:30 p.m. to assess how Senator Robichaud feels the house is progressing.

Hon. Richard H. Kroft: I will take the suggestion of the honourable senator and put my motion at a later time.

However, I have further commentary on this issue. Senator Prud'homme, obviously, finds himself faced with a dilemma, but there has to be some understanding, as Senator Furey said, of the dilemma that committees face. Committees are scheduled to meet at a certain time to deal with proposed legislation. It is not our intention to have a card game. The attendance and attention of senators is required in the Senate chamber as well as in committees.

It is not unknown in this place — it happens to most of us in the course of our day — for senators to make choices, because we cannot be in two places at one time. Senators are deeply engaged, interested in and committed to dealing with certain issues, and those are sometimes being dealt with simultaneously in this place as well as in committee. A fact of life of this place is that we must make choices.

I regret that the honourable senator faces this dilemma so frequently because we do meet at a particular time. However, it is simply not within the power of the committee to say that we will not deal with legislation in committee because it is not convenient to the senators, or that we will meet at some other time. Those choices are just not available. I would ask all honourable senators to give that fair consideration when making judgments.

Senator Prud'homme: I want to give fair consideration.

Hon. John G. Bryden: Honourable senators, I would just mention one matter, because we often run into this situation when we have many bills before the house, for whatever reason. If we do not have enough people to go around on this side, then I am sure the other side faces the same difficulty.

That leads me to a point for clarification. Is it the case that travelling committees are exempted from the rule that committees shall not sit when the Senate is in session? If it is, then perhaps someone would show me that rule.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I certainly sympathize with any chairman and members of any committee whose schedule calls for their committee to sit at 3:30 p.m., or no earlier than when the Senate rises. On occasion, committees have had to wait until 6:00 or 7 p.m. to convene. I would, however, remind all honourable senators that when it was agreed that the Senate would sit at 1:30 p.m. on Wednesdays and Thursdays, it was to allow

committees scheduled to sit on a Wednesday afternoon a fair assurance that, by 4 p.m. this place would adjourn and the committees would be able to sit.

That worked for a while, but it is no longer working. The Senate sometimes sits until 6:00 or 7:00 p.m. Witnesses are asked to wait, or the committee meeting has to be cancelled.

I would suggest — and this should come from the government side, not this side — that we pass a house order of some sort to the effect that, on Wednesdays, we will conclude our sessions here at 4:00 or 4:30 or 5:00 p.m., so that the committees which are scheduled to sit on Wednesday afternoons may have their meeting time confirmed. Otherwise, I am afraid that every Wednesday we will run into the same problem with committees asking to sit as close to 3:30 p.m. as possible. If those requests are agreed to, then half of this chamber will be emptied of many of its members, and issues, such as those Senator Prud'homme would want to discuss, will be discussed in the absence of senators who want to be part of the discussion. We cannot be in both places at once. Surely, we can arrange our schedules to be in both places at different times on a Wednesday.

The Hon. the Speaker *pro tempore*: Is leave granted that the Standing Senate Committee on Legal and Constitutional Affairs have the power to sit at 3:30 p.m. today?

Honourable senators: Agreed.

Motion agreed to.

PRIME MINISTER'S TASK FORCE ON WOMEN ENTREPRENEURS

NOTICE OF INQUIRY

Hon. Catherine S. Callbeck: Honourable senators, pursuant to rule 57(2), I give notice that two days hence I will call the attention of the Senate to the findings contained in the Report of the Prime Minister's Task Force on Women Entrepreneurs.

QUESTION PERIOD

HUMAN RESOURCES DEVELOPMENT

CANADIAN ASSOCIATION OF FOOD BANKS STUDY ON USAGE

Hon. Brenda M. Robertson: Honourable senators, the Canadian Association of Food Banks has recently released a study that found over 778,000 people across Canada use food banks every month. That number is greater than the total combined populations of Prince Edward Island, Newfoundland and Labrador.

Food bank usage is up 5.5 per cent over last year, and up 109 per cent from 1989. Another sad statistic related to this report is that almost 50 per cent of food bank users are families with children. These numbers are shocking and, in the words of the report, should be considered a "national disgrace."

My question is for the Leader of the Government in the Senate: What is the federal government's response to this study, and what will it do to reverse this trend regarding food bank use?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the honourable senator is correct in quoting the statement that it is a national disgrace. I do not think that, in a country as rich as Canada, anyone should have to go to a food bank. With that, I fully concur with her statements.

As to what the federal government will do, it is not a simple problem to solve. Minimum wages, for example, are set by the provinces, and in Canada's largest province, the minimum wage has not increased in a great number of years. Hopefully, that will change with the new administration in the Province of Ontario.

The reality is that people turn to food banks because they do not have enough income, and the shortfall in their income is a direct result of what they earn in the workplace. With so many Canadians earning the minimum wage, and with that minimum wage being consistently low, having enough money to feed a family becomes a recurring and very difficult problem in our society.

The federal government has limited responsibility in this area. Recently, however, it has been working diligently on the issue of providing affordable, adequate housing because, not only are these people frequently without food, they are also frequently living in inadequate accommodation.

Senator Robertson: Honourable senators, I would remind the honourable senator that it is difficult for provinces to respond adequately when they have endured the cuts in transfer payments that this government has made over the past few years. That action has aggravated the situation. Many of these people are social welfare recipients. Many are older people who find, with the cost of medications, in particular, that it is almost impossible to make ends meet. You cannot just foist it all on the provinces. The federal government has a large role to play in this regard.

I have a supplementary question. Honourable senators, the report condemns the federal government for not living up to its international commitment to fight hunger.

party to this declaration, which aims to reduce by half the number of hungry people around the world by 2012 and endorses the concepts of food security and the right to food.

How can Canada expect other countries to live up to their commitments to fight hunger when we have not done so ourselves?

Senator Carstairs: The honourable senator raises a number of issues in her questions. She talked about the cost of medications. That is why the provincial health ministers signed an accord with the federal Minister of Health, the Prime Minister and first ministers about catastrophic drug prices and how to get a handle on them in Canada. Unfortunately, some of those deals are not being put into effect as quickly as they could be. For whatever reason, the provinces and the federal government are not able to come to agreement on this and other areas for which the federal government committed some \$34.5 billion.

In terms of our international commitment to fight hunger, our foreign aid budget has consistently increased, and the commitment is for it to continue to do so in the future.

INDUSTRY

BOVINE SPONGIFORM ENCEPHALOPATHY— AID TO BEEF INDUSTRY WORKERS

Hon. Donald H. Oliver: Honourable senators, my question is to the Leader of the Government in the Senate. Today, it is about BSE and the request for more aid.

In recent weeks, several provincial governments, including those in Alberta, Saskatchewan and Quebec, have announced more aid for beef producers hurt by the BSE crisis. In each instance, the provincial governments have called upon the federal government to provide more BSE-related financial assistance. As well, in the middle of October, representatives of Canada's municipal governments, under the umbrella of the Federation of Canadian Municipalities, called for more immediate financial aid to the beef industry.

Could the Leader of the Government in the Senate please explain where her government currently stands on the issue of providing more BSE-related financial assistance? How much has been given, how much more is to come, and when?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as the honourable senator knows, the Minister of Agriculture announced in September that the federal government and provinces who have signed on to the Canadian Agricultural Income Stabilization Program as an interim measure will enter into bilateral agreements to provide immediate relief to producers in need, such as those in the cattle industry. Honourable senators, it is important to note that this is a \$5.5 billion program over five years.

Last year, Canada recommitted to the Rome Declaration on World Food Security, to which Canada originally became a signatory in 1996. One hundred and eighty-one countries are

INTERNATIONAL TRADE

BOVINE SPONGIFORM ENCEPHALOPATHY—UNITED STATES TRADE RESTRICTIONS ON LIVE CATTLE

Hon. Donald H. Oliver: Honourable senators, in terms of this government's interactions with the American government, what is the latest information that the honourable leader can give, or that this government has, in terms of anticipating an end to the trade ban on Canadian beef moving south into the United States?

As well, is the leader aware of any plans of the incoming Prime Minister to speed up the process to remove these trade bans between Canada and the United States?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as the honourable senator knows full well, I will not speak for what the incoming Prime Minister may do. He will be able to speak for himself when he becomes the leader of the party, and when he — or she — becomes the Prime Minister of this country.

As to the honourable senator's other question, the United States has made a commitment to restore trade in live animals through an expedited regulatory process. We are continuing to work closely with them at all levels to keep the process moving. We recognize how critical live animal exports are to the Canadian beef industry.

Senator Oliver: Can the leader of the government give us any dates as to when live animals will start moving across the border?

Senator Carstairs: Honourable senators, I understand that the United States has a regulatory process similar to ours, and that they have an equivalent type of document to the *Canada Gazette*. Their process can be expedited by periods of time of up to 120 days. In this case they have chosen to expedite it in a 30-day period. My understanding is that good news may come as early as December 1.

TRANSPORT

VIA RAIL—ANNOUNCEMENT OF ALLOCATION OF ADDITIONAL FUNDS

Hon. Leonard J. Gustafson: Honourable senators, last week the Transport Minister, David Collette, made public plans for a new \$700-million passenger rail service. Unfortunately for Mr. Collette, Paul Martin, Mr. Collette's future boss, appears to have other ideas. In Saturday's *The Globe and Mail*, Martin spokesman Scott Reid stated:

We're going to have to review this decision in the context of very tight fiscal circumstances and competing important priorities...

Would the Leader of the Government in the Senate care to comment on this situation, since it relates to other initiatives that the government may be announcing in the dying days of

Mr. Chrétien's reign as Prime Minister? Is the government perhaps in a state of policy paralysis because of the competing agendas of the current Prime Minister and the one to come?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, obviously, if we were in a state of paralysis, the Honourable Minister Collette would not have made the announcement that he did.

Senator Gustafson: In the past, Mr. Martin has been critical of VIA Rail and the level of government support it has received relative to the bus industry, for instance, where he once held significant interests.

Let me read from an article in *The Globe and Mail* on March 10, 1989, quoting Paul Martin:

"VIA Rail is being used to destroy Voyageur," he charged, adding that the federal subsidies to the Crown corporation represent unfair competition.

Would the Leader of the Government in the Senate care to comment on the prospect that these views may be colouring Mr. Martin's response to Mr. Collette's announcement?

Senator Carstairs: My recommendation to the honourable senator is that he put that in a file, and when and if Paul Martin becomes the Prime Minister of Canada, he can re-ask the question.

Senator Gustafson: I have a supplementary question. In making the announcement, Mr. Collette said that the \$700 million cash infusion will lay the groundwork for VIA Fast, a high-speed train to run between Quebec City and Windsor, Ontario.

Is the Leader of the Government in the Senate aware of whether or not this government is considering the financing of other high-speed train proposals for heavy traffic economic corridors in Canada, such as that between Calgary and Edmonton, and could she explain why the Quebec City-Windsor proposal appears to be taking precedence over other proposals that are out there?

Senator Carstairs: Honourable senators, clearly there are other proposals out there and others must be considered. However, the largest area of traffic in the country, the considerably higher number of passengers, is in the Quebec-Windsor corridor.

NATIONAL DEFENCE

REPLACEMENT OF LEOPARD TANK FLEET

Hon. J. Michael Forrestall: Honourable senators, I have a question with respect to an announcement made by the Minister of National Defence today. Is the minister able to indicate to us whether the announcement by the minister today regarding the purchase of 60 new Stryker mobile gun systems for the Canadian army represents a decision not to replace the heavier tanks?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, my understanding is that the acquisition of the MGS, which is also known as the light armoured vehicle — also known as the Stryker — will allow DND to replace the current fleet of Leopard tanks and continue to maintain direct fire capacity.

ACQUISITION OF STRYKER LIGHT ARMoured VEHICLES

Hon. J. Michael Forrestall: Honourable senators, then that is the end of the heavy track vehicle tank; the Leopard will not be replaced. In light of the tests done on it four or five years ago, that seems to fly in the face of good, sound military judgment.

Can the minister indicate to us when these armoured vehicles, ostensibly now to replace the old system, might be available for transport to the theatre of operations? Could she indicate how we will get them there and when they might arrive?

• (1410)

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the decision has just been made. The government has announced that it will purchase some 66 light armoured vehicles. I would assume that, at this point, we have some months down the line before they would actually arrive. If the honourable senator is asking whether they will be sent to Afghanistan, I do not think a decision can be made on that until the vehicles are in our possession, and they are not yet in our possession.

Senator Forrestall: I might ask the minister, notwithstanding the uncertainty of the months that lie head, whether or not she could be a little clearer about the general terms. She is fully aware that my understanding of "immediately" could be anything up to 10 years. Could the minister be clearer about that?

Senator Carstairs: Honourable senators, I know where the honourable senator is coming from, but I do not think that one can compare apples and oranges. In this case, the honourable minister has announced that we will purchase some 66 light armoured vehicles as part of the transformation of the Canadian Armed Forces. I will seek to learn when we will receive those vehicles and what use will be made of them in the first instance.

NORTH ATLANTIC TREATY ORGANIZATION RESPONSE FORCE

Hon. Michael A. Meighen: Honourable senators, my question is also to the Leader of the Government in the Senate. Earlier this month, as honourable senators will be aware, NATO launched the first units of what will eventually be a 21,000-member rapid reaction force. Called the NATO Response Force, it is a standing, multinational, combined air, land, sea and special operations force under a single commander. It is expected to be fully operational by 2006. The NATO Response Force has been touted by its commander as a departure for NATO, giving the organization a global reach that will enable it to exert

worldwide influence. The brigade-sized force will be drawn from the member nations' own forces.

Could the Leader of the Government tell us whether Canada was involved in the discussions leading to the creation of this force, and whether we will be contributing troops to it?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as a member of NATO, I presume that we were part of the decision-making process. However, as to whether we are to be a member, or any further details, I do not have that information available at this time.

Senator Meighen: Would the Leader of the Government be good enough to make inquiries as to whether such a decision has been made? At the same time, perhaps she could inquire what implications this new response force has for the NATO Charter — in other words, whether the Charter needs to be modified to accommodate future out-of-area global missions that would otherwise, to my understanding, fall under the jurisdiction of the United Nations?

Senator Carstairs: Honourable senators, I will seek the answers that the honourable senator wishes, and do so with dispatch.

FOREIGN AFFAIRS

SUDAN—PRIORITY OF UNITED NATIONS HUMAN RIGHTS POLICY OVER BUSINESS INTERESTS

Hon. A. Raynell Andreychuk: Honourable senators, several weeks ago, in his final speech to the United Nations, the Prime Minister strongly urged that organization to put the protection of people at the heart of its mandate. He stated at the time, and I quote:

... that in the face of large scale loss of life or ethnic cleansing, the international community has the moral responsibility to protect the vulnerable.

Yet we have learned this week from a book authored by Madeleine Drohan that this government has failed to follow its own prescription for the United Nations by allowing business interests to trump human security, notably in the Sudan conflict. There was a report in the media on the weekend that former Liberal foreign minister Lloyd Axworthy, the architect of the government's human security approach to foreign policy, was constantly thwarted by his own officials in the implementation of that policy. Those officials, the report said, placed business interests above human security and human rights.

The case of Talisman Oil in Sudan is a case in point where Mr. Axworthy was helpless to do anything about the company's links to the civil war. Is it, in fact, the case that in the Sudan situation, the government's officials indicated that it was acceptable for Talisman to continue to work in southern Sudan, did not raise concerns about the human rights situation, and in fact did not take steps to alter their involvement there?

Hon. Sharon Carstairs (Leader of the Government): This is a question that the honourable senator has posed before, and the answer is exactly the same: Talisman was operating in an area of the world where we know there were human rights violations. Of that there is no question. The officials with Foreign Affairs informed Talisman, and made several recommendations about the way Talisman should conduct its activities. However, in reality, we have no control over the activities of that company in a country like Sudan. It operates as an independent corporate entity.

Senator Andreychuk: Supplementary to that, then, is it correct, as the news report and the book that I previously referred to indicate, that senior or other officials in the government thwarted the minister from raising the human security agenda in favour of business interests in Sudan? If so, who were these individuals who would have overruled the minister?

Senator Carstairs: The only person who could answer that question, honourable senators, is Mr. Axworthy. I invite the honourable senator to write to him.

Senator Andreychuk: I do not think it is valid for the government to indicate that I should contact an ex-minister. My question is: Did officials overrule a minister who was raising human rights issues, and support commercial interests? In other words, my concern is not with Mr. Axworthy, although I have sympathy for him if his officials were overruling him. My concern is with who was directing those officials, if it was not the minister?

Senator Carstairs: Honourable senators, that is why I think we can assume that Mr. Axworthy was not overruled.

Senator Andreychuk: Is it correct that the government is saying that no one thwarted Minister Axworthy in his pursuit of the human rights agenda and that therefore this report and this book are wrong?

Senator Carstairs: Honourable senators, as I indicated before, the only person who could give a definitive answer to that question would be Mr. Axworthy.

INDUSTRY

PRIME MINISTER'S TASK FORCE ON WOMEN ENTREPRENEURS—MATERNITY BENEFITS FOR SELF-EMPLOYED BUSINESS WOMEN

Hon. Catherine S. Callbeck: Honourable senators, my question is to the Leader of the Government in the Senate. This morning, the Prime Minister's Task Force on Women Entrepreneurs released its report. The report outlines many challenges faced by businesswomen. It also contains recommendations as to how the federal government could assist self-employed women to reach their full potential.

One of the major barriers that we heard about, time after time, was the lack of maternity benefits for women entrepreneurs. Many women indicated that they would be willing to pay into a fund in order to participate in these benefits. My question is whether the government is willing to find a way to enable self-employed women to receive maternity benefits?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, before I answer the honourable senator's question, let me congratulate her and the other members of the committee who travelled throughout this country to ask women entrepreneurs about their circumstances and their problems in an effort to seek solutions to those problems.

As to the specific question that the honourable senator asks, as I am sure she is aware, Statistics Canada did a survey of self-employment in Canada, which was released in January of 2002. That survey confirmed that the majority of self-employed Canadians were not interested in contributing to an income insurance program. They preferred the status quo. As I am sure the honourable senator understands, voluntary coverage raises a number of complex issues, including how such a program could be financed.

The EI program provisions now are based on the fact that those who receive benefits have agreed to mandatory coverage. This is an issue that I think needs to be re-examined, and the House of Commons Standing Committee on Human Resources Development has been asked by the minister to further examine the issue of coverage for the self-employed.

• (1420)

THE CABINET

CRITERIA ON CONFLICT OF INTEREST—ACCEPTANCE OF INVITATIONS FROM IRVING COMPANY

Hon. Marjory LeBreton: Honourable senators, the Leader of the Government in the Senate said yesterday, at page 2315 of the *Debates of the Senate*, that:

One must carefully separate when one does something with a friend, from when one does something for so-called other reasons...

We now know that Paul Zed, a former Liberal member of Parliament and a well-known lobbyist, has invited the Minister of Industry, the Minister of the Environment, the Minister of Fisheries, and now the Minister of Human Resources Development, to the Irving fishing lodge for vacations.

Can the Leader of the Government in the Senate tell us, when the Prime Minister is warning ministers about conflicts of interest, what criteria is used to separate public business from private business, and will she table these criteria?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the government already did, quite frankly, table the criteria when we tabled all of the conflict of interest materials with the whole ethics package a year and a half ago.

It should also be pointed out that Mr. Zed is a member of the Irving family.

Senator LeBreton: Honourable senators, according to Industry Canada's latest lobbyist registration Web site, Paul Zed was registered as a lobbyist for the following companies:

J.D. Irving Ltd., Charlotte County Ports Ltd., Atcon Construction Inc., SNC Lavalin Inc., Mounted Police Members' Legal Fund, Vancouver Resource Society, CGI Information Systems and Management Consultants Inc., International Fund for Animal Welfare — Canada, Canadian Arctic Resources Committee, Government of Yukon, Co-op Atlantic, Canadian Lung Association, Peace Bridge Duty Free, White Mount Academy of the Arts, Kimberley-Clark Inc., McCain Foods Limited, Janssen-Ortho Inc., Innu Healing Foundation and UNYSIS Canada Inc.

Obviously, he is a very busy man looking after his various clients.

What steps has the government taken to ensure that, in the various ministerial Irving camp vacations, there will be no discussion of any issues which touch on Mr. Zed's lobbying activities, for which he is paid?

Senator Carstairs: Honourable senators, obviously Mr. Zed is not only a very busy but also a very accomplished man. I understand also that he is a very good friend to a great number of people on this side of the chamber and, I suspect, a few on the other side as well.

REGISTRATION OF GIFTS OVER \$200

Hon. Marjory LeBreton: I am sure that honourable senators remember him from the Pearson airport days.

Yesterday, in the other place, ministers of the Crown stated that they had declared all gifts valued over \$200, yet the majority of the Web sites do not list any gifts for at least two years. Indeed, the government leader's own declaration does not include any gifts being received at all. Is it now the policy of the government for ministers to disclose gifts to the ethics counsellor, but not to make the declarations public?

Hon. Sharon Carstairs (Leader of the Government): No, senator. Let me be very clear. It states that we must register gifts over \$200. I have not received a gift over \$200. When I am asked if there is a particular gift I would like, I always suggest that a charitable donation be made to an active charity in the particular community.

FOREIGN AFFAIRS

UNITED NATIONS GENERAL ASSEMBLY RESOLUTION ON NUCLEAR NON-PROLIFERATION

Hon. Douglas Roche: Honourable senators, yesterday the minister kindly agreed to take forward my question concerning Canada's vote on the resolution at the First Committee of the UN General Assembly Introduced by the New Agenda Coalition, it is entitled, "Towards A Nuclear-Weapon-Free World: A New Agenda."

I am confident that the minister did take that forward and I thank her.

Can she now indicate whether the government will vote in favour of that resolution. If the minister is not in a position to so state at this moment, will she undertake to inform the office of Minister Graham that this morning a revision of the resolution in question was introduced on the floor of the First Committee? I have examined that revision and it makes it even sweeter, so to speak, for countries like Canada to vote in favour of the resolution.

Will the minister undertake to go back to the office of the Minister of Foreign Affairs to ensure that they understand the gravity and importance of this issue, and in order that Canada may live up to its commitment to nuclear disarmament ensure a yes vote for this important resolution? Because of the time exigencies involved, will she be good enough to say she that will do it this afternoon?

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for his question. Of course, I will do just that. In order that the honourable senator knows what is happening, I can tell him that I have my staff listening to Question Period and, as soon as Question Period is over, they inform the ministers of the Crown of the issues of concern to their particular departments.

ORDERS OF THE DAY

PUBLIC SERVICE MODERNIZATION BILL

THIRD READING—MOTION IN AMENDMENT—VOTE DEFERRED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts.

And on the motion in amendment of the Honourable Senator Kinsella, seconded by the Honourable Senator Atkins, that the Bill be not now read a third time but that it be amended

(a) in clause 2

(i) on page 8, by replacing lines 27 to 32 with the following:

"include, among other things, harassment in the workplace.", and

(ii) on page 99, by adding after line 8, the following:

"PART 2.1

PROTECTION OF WHISTLEBLOWERS

Definitions

238.1 The following definitions apply in this Part.

"Commissioner" means the commissioner of the Public Service Commission who has been designated as Public Interest Commissioner under section 238.3.

"employee" has the same meaning as in Part 2.

"law in force in Canada" means a provision of an Act of Parliament or of the legislature of a province or an instrument issued under the authority of such an Act that is in force at the relevant time.

"minister" means a member of the Queen's Privy Council for Canada who holds office as a minister of the Crown.

"wrongful act or omission" means an act or omission that is:

- (a) an offence against a law in force in Canada;
- (b) likely to cause a significant waste of public money;
- (c) likely to endanger public health or safety or the environment;
- (d) a significant breach of an established public policy or of a directive in the written record of the public service; or
- (e) one of gross mismanagement or an abuse of authority.

Purpose

Purpose

238.2 The purpose of this Part is

(a) to provide for the education of persons working in the public service on ethical practices in the workplace and the promotion of the observance of these practices;

(b) to protect the public interest by providing a means for employees of the public service to make allegations, in confidence, of wrongful acts or omissions in the workplace, to an independent Commissioner who will investigate them and seek to have the situation dealt with, and who will report to Parliament in respect of problems that are confirmed but have not been dealt with; and

(c) to protect employees of the public service from retaliation for having made or for proposing to make, in good faith and on the basis of reasonable belief, allegations of wrongdoing in the workplace.

Public Interest Commissioner

Designation

238.3.(1) The Governor in Council shall designate one of the commissioners of the Public Service Commission to serve as Public Interest Commissioner.

Part of role of Commission

(2) The role of Public Interest Commissioner is a part of the function of the Public Service Commission.

Powers

(3) The Commissioner may exercise the powers of office of a commissioner of the Public Service Commission for the purposes of this Part.

Information made public

238.4 (1) Subject to section 238.9, the Commissioner may make public any information that comes to the attention of the Commissioner as a result of the performance or exercise of the Commissioner's duties or powers under this Part if, in the Commissioner's opinion, it is in the public interest to do so.

Disclosure of necessary information

(2) The Commissioner may disclose, or may authorize any person acting on behalf or under the direction of the Commissioner to disclose, information that, in the Commissioner's opinion, is necessary to

(a) conduct an investigation under this Part; or

(b) establish the grounds for findings or recommendations contained in any report made under this Part.

Disclosure in the course of proceedings

(3) The Commissioner may disclose, or may authorize any person acting on behalf or under the direction of the Commissioner to disclose, information necessary to assist

(a) a prosecution for an offence under section 238.20; or

(b) a prosecution for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made under this Part.

Disclosure of offence

(4) The Commissioner may disclose to the Attorney General of Canada or of a province, as the case may be, information relating to the commission of an offence against any law in force in Canada that comes to the attention of the Commissioner as a result of the performance or exercise of the Commissioner's duties or powers under this Part if, in the Commissioner's opinion, there is evidence of an offence.

Not competent witness

238.5 The Commissioner or person acting on behalf or under the direction of the Commissioner is not a competent witness in respect of any matter that comes to their knowledge as a result of the performance or exercise of the Commissioner's duties or powers under this Part in any proceeding other than

(a) a prosecution for an offence under section 238.20; or

(b) a prosecution for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made under this Part.

Protection of Commissioner

238.6 (1) No criminal or civil proceedings lie against the Commissioner, or against any person acting on behalf or under the direction of the Commissioner, for anything done, reported or said in good faith as a result of the performance or exercise or purported performance or exercise of the Commissioner's duties or powers under this Part.

Libel or slander

(2) For the purposes of any law relating to libel or slander,

(a) anything said, any information supplied or any record or thing produced in good faith and on the basis of reasonable belief in the course of an investigation carried out by or on behalf of the Commissioner under this Part is privileged; and

(b) any report made in good faith by the Commissioner under this Part and any fair and accurate account of the report made in good faith for the purpose of news reporting is privileged.

Education

Dissemination

238.7 The Commissioner shall promote ethical practices in the public service and a positive environment for giving notice of wrongdoing, by disseminating knowledge of this Part and information about its purposes and processes and by such other means as seem fit to the Commissioner.

Notice of Wrongful Act or Omission

Notice by employee

238.8 (1) An employee who has reasonable grounds to believe that another person working for the public service or in the public service workplace has committed or intends to commit a wrongful act or omission

(a) may file with the Commissioner a written notice of allegation; and

(b) may request that their identity be kept confidential with respect to the notice.

Form and content

(2) A notice under subsection (1) shall identify

(a) the employee making the allegation, and be signed by that person;

(b) the person against whom the allegation is being made; and

(c) the grounds on which the employee believes that the act or omission is wrongful and has been or will be committed, giving the particulars that are known to the employee and the reasons and the grounds on which the employee believes the particulars to be true.

No breach of oath

(3) A notice by an employee to the Commissioner under subsection (1), given in good faith and on the basis of reasonable belief, is not a breach of any oath of office or loyalty or secrecy taken by the employee and, subject to subsection (4), is not a breach of duty.

Solicitor-client privilege

(4) No employee, in giving notice under subsection (1), may violate any law in force in Canada or rule of law protecting privileged communications as between solicitor and client, unless the employee has reasonable grounds to believe there is a significant threat to public health or safety.

Waiver

(5) An employee who has made a request under paragraph (1)(b) may waive the request or any resulting right to confidentiality, in writing, at any time.

Rejected notice

(6) Where the Commissioner is not able or willing to give an assurance of confidentiality in response to a request made under paragraph (1)(b), the Commissioner may reject the notice and take no further action on it, but shall keep it confidential.

Confidentiality

238.9 Subject to subsection 238.11(5) and any other obligation of the Commissioner under this Part or any law in force in Canada, the Commissioner shall keep confidential the identity of an employee who has filed a notice with the Commissioner under subsection 238.8(1) and to whom the Commissioner has given an assurance that, subject to this Part, their identity will be kept confidential.

Initial review

238.10 On receiving a notice under subsection 238.8(1), the Commissioner shall review it, may ask the employee for further information and may make such further inquiries as, in the opinion of the Commissioner, may be necessary.

Rejected notices

238.11 (1) The Commissioner shall reject and take no further action on a notice given under subsection 238.8(1), if the Commissioner makes a preliminary determination that the notice

(a) is trivial, frivolous or vexatious;

(b) fails to allege or give adequate particulars of a wrongful act or omission;

(c) breaches subsection 238.8(4); or

(d) was not given in good faith or on the basis of reasonable belief.

False statements

(2) The Commissioner may determine that a notice that contains a statement that the employee knew to be false or misleading at the time it was made was not given in good faith.

Mistaken facts

(3) The Commissioner shall not determine that a notice was not given in good faith for the sole reason that it contains mistaken facts unless the Commissioner has grounds to believe that there was adequate opportunity for the employee to discover the mistake.

Report

(4) Where the Commissioner has made a determination under subsection (1), the Commissioner shall, in writing and on a timely basis, advise the employee who gave notice under subsection 238.8(1) of that determination.

Report to official and minister

(5) Where the Commissioner determines under subsection (1) that a notice was given in breach of subsection 238.8(4) or was not given in good faith and on the basis of reasonable belief, the Commissioner may advise

(a) the person against whom the allegation was made, and

(b) the minister responsible for the employee who gave the notice of the matters alleged and the identity of the employee.

Valid notice

238.12 (1) The Commissioner shall accept a notice given under subsection 238.8(1) where the Commissioner determines that the notice

(a) is not trivial, frivolous or vexatious;

(b) alleges and gives adequate particulars of a wrongful act or omission;

(c) does not breach subsection 238.8(4); and

(d) was given in good faith and on the basis of reasonable belief.

Report to employee

(2) Where the Commissioner has made a determination under subsection (1), the Commissioner shall, in writing and on a timely basis, advise the employee who gave notice under subsection 238.8(1) of that determination.

Investigation and Report

Investigation

238.13 (1) The Commissioner shall investigate a notice accepted under section 238.12, and, subject to subsection (2), shall prepare a written report of the Commissioner's findings and recommendations.

Report not required

(2) The Commissioner is not required to prepare a report if satisfied that

(a) the employee ought to first exhaust other procedures available to the employee;

(b) the matter could more appropriately be dealt with, initially or completely, by means of a procedure provided for under a law in force in Canada other than this Part; or

(c) the length of time that has elapsed between the time the wrongful act or omission that is the subject-matter of the notice occurred and the date when the notice was filed is such that a report would not serve a useful purpose.

Report to employee

(3) Where the Commissioner has made a determination under subsection (2), the Commissioner shall, in writing and on a timely basis, advise the employee who gave notice under subsection 238.8(1) of that determination.

Confidential information

(4) Information related to an investigation is confidential and shall not be disclosed, except in accordance with this Part.

Report to minister

(5) The Commissioner shall provide the minister responsible for the employee against whom an allegation has been made, on a timely basis and in no case later than one year after the Commissioner receives the notice, with a copy of the report made under subsection (1).

Minister's response

238.14 (1) A minister who receives a report under subsection 238.13(5) shall consider the matter and respond to the Commissioner.

Content of response

(2) The response of a minister under subsection (1) shall specify the action the minister has taken or proposes to take to deal with the Commissioner's report, or that the minister proposes to take no action.

Further responses

(3) A minister who, for the purposes of this section, specifies action proposed to be taken shall give such further responses as are requested by the Commissioner until such time as the minister advises that the matter has been dealt with.

Emergency public report

238.15 (1) The Commissioner may require the President of the Treasury Board to cause an emergency report prepared by the Commissioner to be laid before both Houses of Parliament on the next day that the House sits if, in the Commissioner's opinion, it is in the public interest to do so.

Content of report

(2) A report prepared by the Commissioner for the purposes of subsection (1) shall describe the substance of a report made to a minister under subsection 238.13(5) and the minister's response or lack thereof under section 238.14.

Annual report

238.16 (1) The Public Service Commission shall include in the annual report to Parliament made pursuant to section 23 of the *Public Service Employment Act* a statement of activity under this Act prepared by the Commissioner that includes

(a) a description of the Commissioner's activities under section 238.7;

(b) the number of notices received pursuant to section 238.8;

(c) the number of notices rejected pursuant to sections 238.8 and 238.11

(d) the number of notices accepted pursuant to section 238.12;

(e) the number of accepted notices that are still under investigation pursuant to subsection 238.13(1);

(f) the number of accepted notices that were reported to ministers pursuant to subsection 238.13(5);

(g) the number of reports to ministers pursuant to subsection 238.13(5) in respect of which action satisfactory to the Commissioner has been taken;

(h) the number of reports to ministers pursuant to subsection 238.13(5) in respect of which action satisfactory to the Commissioner has not been taken;

(i) an abstract of the substance of all reports to ministers pursuant to subsection 238.13(5) and the responses of ministers pursuant to section 238.14; and

(j) where the Commissioner is of the opinion that the public interest would be best served, the substance of an individual report made to a minister pursuant to subsection 238.13(5) and the response or lack thereof of a minister pursuant to section 238.14.

Annual report

(2) The Public Service Commission may include in the annual report to Parliament made pursuant to section 23 of the Public Service Employment Act an analysis of the administration and operation of this Part and any recommendations with respect to it.

Prohibitions

False information

238.17 (1) No person shall give false information to the Commissioner or to any person acting on behalf or under the direction of the Commissioner while the Commissioner or person is engaged in the performance or exercise of the Commissioner's duties or powers under this Part.

Bad faith

(2) No employee shall give a notice under subsection 238.8(1) in bad faith.

No disciplinary action

238.18 (1) No person shall take disciplinary action against an employee because

(a) the employee, acting in good faith and on the basis of reasonable belief, has disclosed or stated an intention to disclose to the Commissioner that a person working for the public service or in the public service workplace has committed or intends to commit a wrongful act or omission;

(b) the employee, acting in good faith and on the basis of reasonable belief, has refused or stated an intention to refuse to commit an act or omission the employee believes would be a wrongful act or omission under this Part;

(c) the employee, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done in order to comply with this Part; or

(d) the person believes that the employee will do anything referred to in paragraph (a), (b) or (c).

Definition

(2) In this section, "disciplinary action" means any action that adversely affects the employee or any term or condition of the employee's employment or adversely affects the employee's opportunity for future employment within or outside the public service, and includes:

(a) harassment;

(b) financial penalty;

(c) affecting seniority;

(d) suspension or dismissal;

(e) denial of meaningful work or demotion;

(f) denial of a benefit of employment;

(g) refusing to give a reference; or

(h) any other action that is disadvantageous to the employee.

Rebuttable presumption

(3) A person who takes disciplinary action against an employee within two years after the employee gives a notice to the Commissioner under subsection 238.8(1) shall be presumed, in the absence of a preponderance of evidence to the contrary, to have taken the disciplinary action against the employee contrary to subsection (1).

Disclosure prohibited

238.19 (1) Except as authorized by this Part or any other law in force in Canada, no person shall disclose to any other person the name of the employee who has given a notice under subsection 238.8(1) and has requested confidentiality under that subsection, or any other information the disclosure of which reveals the employee's identity, which may include the existence or nature of a notice, without the employee's consent.

Exception

(2) Subsection (1) does not apply where the notice was given in breach of subsection 238.8(4) or was not given in good faith and on the basis of reasonable belief.

Enforcement

Offences and punishment

238.20 A person who contravenes subsection 238.8(4), section 238.17, or subsection 238.18(1) or 238.19(1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000.

Employee Recourse

Recourse available

238.21 (1) An employee against whom disciplinary action is taken contrary to section 238.18 is entitled to use every recourse available to the employee under the law, including grievance proceedings provided for under an Act of Parliament or otherwise.

Recourse not lost

(2) An employee may seek recourse as described in subsection (1) whether or not proceedings based upon the same allegations of fact are or may be brought under section 238.20.

Benefit of presumption

(3) In any proceedings of a recourse referred to in subsection (1), the employee is entitled to the benefit of the presumption established in subsection 238.18(3).

Transitional

(4) Where grievance proceedings are current or pending on the coming into force of this Part, the proceedings shall be dealt with and disposed of as if this Part had not been enacted.”; and

(b) in clause 8 on page 108,

(i) by striking out lines 13 to 20, and

(ii) by relettering paragraphs 11.1(1)(i) and 11.1(1)(j) as paragraphs 11.1(1)(h) and 11.1(1)(i) and any cross references thereto accordingly; and

(c) in clause 88 on page 193, by adding after line 17, the following:

“88.1 Schedule II to the Act is amended by adding the following in alphabetical order:

Public Service Labour Relations Act
section 238.9, subsection 238.13(4), section 238.19

Loi sur les relations de travail dans la fonction publique
article 238.9, paragraphe 238.13(4), article 238.19.”.

Hon. Gerald J. Comeau: Honourable senators, I am pleased to speak in support of Senator Kinsella's amendments to include whistle-blowing protection in Bill C-25. Honourable senators will recall that, in a previous session of Parliament, the Senate National Finance Committee approved Senator Kinsella's private bill to protect from retribution those who expose wrongdoing in the workplace. His bill did not receive third reading before that session ended, but it does remain on the Senate Order Paper in this session as Order No. 6. Senator Kinsella's amendment would essentially add that same protection to the Public Service Labour Relations Act by incorporating the provisions of his bill into this bill.

Honourable senators, more than 10 years have passed since the then Leader of the Opposition, Jean Chrétien, wrote to the Public Service Alliance on June 11, 1993, to promise whistle-blowing protection. Mr. Chrétien cited the Liberal policy paper entitled, “Public Sector Ethics and Morals,” telling the Public Service Alliance that:

...an effective policy to protect public servants who expose waste, corruption graft and similar situations is imperative. Public servants must be able to report about legal or unethical behaviour they encounter on the job without fear of reprisal.

In his letter, Mr. Chrétien went on to state:

A Liberal government would introduce “Whistleblowing” legislation in the next Parliament.

A couple of months later, in a document called “The Liberal Approach to the Public Service,” released by the Liberal party on September 9, 1993, it was stated that:

Public servants who blow the whistle on illegal or unethical behaviour should be protected. A Liberal government will introduce whistle-blowing legislation in the first session of a new Parliament.

Honourable senators, 10 years later, on the eve of his retirement, the time has come for the Prime Minister to keep his word and protect, in the words of his letter, "those who expose waste, corruption, graft and similar situations."

A few years ago, the government gave us not whistle-blowing legislation, but the Public Service Integrity Officer. This was a step in the right direction, but it is no substitute for legislated protection.

Further, this bill, as it stands now, will weaken what few standards exist now in two ways. First, employees who are wronged will no longer be able to sue the government. They will have to go through the grievance procedure. Therefore, if your manager decides to get even with you by making your life a living hell, to the point where you quit because you simply could not take it any longer, you will not be able to sue for constructive dismissal.

Second, this bill delegates increased powers to hire and promote down to lower level managers, while gutting the Public Service Commission's ability to police hiring and promotions. Under such conditions, reporting that your manager has his or her hands in the till could very well destroy your career and give you a taste of what it was like to work at the Privacy Commission. Even if your life is not made totally miserable, you can expect that a less qualified co-worker who looks the other way will be promoted long before you.

The clearest example of why we need whistle-blowing legislation comes to us from the Privacy Commission, where public servants lived through what has been described as a reign of terror. The Auditor General made it quite clear in her report that whistle-blowing mechanisms at the Privacy Commission were totally ineffective. Under the heading "Stress and Intimidation in the Workplace," she said:

• (1430)

Employees we interviewed told of a poisoned work environment at the Office of the Privacy Commissioner in which staff were intimidated by the former Commissioner.

Our interviews consistently revealed instances of authoritarian behaviour amounting to what employees called a "reign of terror" by the former Commissioner or certain executives carrying out his directives.

Although the former Commissioner strongly denied the existence of a "reign of terror," our interviews repeatedly disclosed instances of his humiliation of staff, inappropriate comments, intolerance, and verbal abuse that were socially unacceptable — in either Canada in general or in the public service in particular.

Later in her report, the Auditor General had this to say under the heading "whistleblowing mechanisms are perceived as ineffective or non-existent":

A key function of central agencies is to provide a means for public servants to report wrongdoing.

Mechanisms that serve the purpose include section 80 of the Financial Administration Act, which requires that public servants report financial wrongdoing or mismanagement to a superior officer. Another is the government's Policy on the Internal Disclosure of Information Concerning Wrongdoing.

The policy defines wrongdoing as any act or omission concerning a violation of a law or regulation; misuse of public funds or assets; gross mismanagement; or a substantial or specific danger to the life, health, and safety of Canadians or the environment.

The policy requires departments to designate a senior officer to be responsible for the policy and recommends that the employees report wrongdoing internally to this senior officer. At the OPC, the designated officer was the Executive Director.

The Executive Director at the Office of the Privacy Commissioner was allegedly part of the problem.

The Auditor General goes on to say:

If a federal employee believes that an issue cannot be disclosed within his or her department, or if it has been raised but not addressed appropriately, the employee can report it to the Public Service Integrity Officer.

We found that employees at the Office of the Privacy Commissioner perceived the avenues for reporting wrongdoing or financial mismanagement as generally ineffective, offering little or no protection to staff who might notify a superior officer or the Public Service Integrity Officer.

Many employees told us that the Public Service Integrity Officer's role is not working as expected and the position lacks the necessary clout. We also found that many employees of the OPC were unaware that the position of the Public Service Integrity Officer even existed.

The Public Service Integrity Officer himself, Dr. Edward Keyserlingk, stated in his recent annual report that the Public Service Integrity Office should be legislatively based rather than merely policy based, as it is at present. He has also called for legislation to provide a legal framework to enable the disclosure and investigation of wrongdoing and to provide legal protection for disclosures, as is proposed by the amendments brought forward by Senator Kinsella.

Faced with the clear example given by the Privacy Commission of why whistle-blowing legislation is needed, and faced with a report from the Public Service Integrity Officer calling for a legislated framework, the government took the decisive step of ordering yet another study.

In January, perhaps before Mr. Martin replaces Mr. Chrétien, perhaps after, a working group will report on internal disclosure policies.

Honourable senators, let us call a spade a spade. This is a stall tactic designed to put off the matter as long as possible. Once this working group comes out with a report, the President of the Treasury Board will then go on to ponder its meaning. There will no doubt be a press release telling us that the government will now enter into meaningful consultations with stakeholders aimed at developing a multi-year roadmap that will seek to enhance the integrity of the workplace, culture of ethics — blah, blah, blah. In other words, stall, stall, stall.

Honourable senators, on Tuesday, the Public Service Alliance of Canada released a poll on whistle-blowing. Following the Radwanski episode, it found that 89 per cent of Canadians expect the government to bring in legislation so public service sector workers who expose government wrongdoing would be protected against reprisals. Canadians of all ages, both genders, all political affiliations, religions and socio-economic profiles agree on this subject according to the poll conducted by the Environics Research Group.

Honourable senators, I conclude my remarks in support of this amendment by quoting the concluding paragraph of the Public Service Alliance of Canada press release of Tuesday on the broken promise to bring in whistle-blowing legislation.

Ten years later, and on the eve of another federal election, we believe the government should live up to this promise and so do the vast majority of Canadians.

Some Hon. Senators: Hear, hear!

Senator Carstairs: Question!

Hon. Joseph A. Day: Honourable senators, the Honourable Senator Comeau referred to the Public Service Alliance, the Treasury Board and the Auditor General, and I will briefly refer to each of those as well. First, let me tell honourable senators that this amendment was considered at committee and studied thoroughly. The committee decided not to propose it to this house. Therefore, it is not a matter that is new to the members of the committee, certainly.

I would like to thank Senator Kinsella for his work over the years with respect to this very important subject matter. Government officials, while appearing before our committee,

indicated that the government is taking this matter seriously through Madam Robillard.

The first group I will refer to is the Public Service Alliance of Canada. We had before our committee Nycole Turmel, and this is a quote from her appearance on September 2, 2003:

I should like to begin with our position on whistle-blowing. Whistle-blowing should be covered by separate and stand-alone legislation.

Senator Lynch-Staunton: Bring it in!

Senator Day: The second person who appeared before our committee and commented on whistle-blowing was Mr. Bob Emond, President of the Association of Professional Executives of the Public Service of Canada. He had this to say:

The events of this past summer have heightened the interest in enacting whistle-blowing legislation. We understand the concern. However, we do not think it advisable to incorporate provisions on whistle-blowing in Bill C-25.

The third person I would refer to is Mr. Pierre de Blois, Executive Director of the Association of Professional Executives of the Public Service of Canada. He also appeared before our committee and said the same thing: It should be separate legislation.

Finally, following a question in committee from Senator Kinsella on a whistle-blowing mechanism in a modern public service, Sheila Fraser, the Auditor General, replied that she would be coming out with a report on this particular area. She said:

...we have a report coming in November that we will be looking at values and ethics that might discuss whistle-blowing....

I think it is an important area that requires study and reflection.

I would think, too, should it be proposed that there be, it should apply to all public service and not be limited, for instance, as Bill C-25 is, to just the core public service, if you will. I think it is a question that merits study and attention.

Dr. Keyserlingk, who was the Public Service Integrity Officer under the Treasury Board, came before us and gave a history of what had happened. My honourable friend Senator Comeau has related to senators some of what he had to say. Dr. Keyserlingk indicated in his recommendations, after giving us a thorough background of the work he had done, the following:

I am recommending that the legislation be stand-alone, be a statute specifically, exclusively directed to the issue of disclosure of wrongdoing or whistle-blowing, and not attached to any other statute.

The minister, while appearing before our committee, indicated that she was taking his recommendation seriously. In fact, she has appointed a group to look into this matter. Dr. Keyserlingk agreed to serve on that board or group and to report back to the President of the Treasury Board by the end of January. The minister said that if the recommendation was legislation, which we anticipate it will be, that she was inclined to take that to her colleagues in cabinet and move on separate legislation.

• (1440)

Honourable senators, it is my submission that it would be appropriate to vote down this amendment. We are familiar with it. The committee considered the amendment and decided against recommending it. I ask honourable senators to reject this particular amendment.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Would the honourable senator take a question?

Senator Day: I will attempt to answer the honourable senator's question.

Senator Kinsella: Is it not true that, in committee, when the Chair of the committee, Senator Murray, asked the President of the Treasury Board to follow her process and commit to bringing in legislation, that she said "no"?

Senator Day: My understanding is that Madam Robillard said that she was very favourably inclined that way. However, she said that this was a cabinet decision and not her own. Therefore, she would have to take the issue to cabinet, but she was waiting for a report from the group that would come at the end of January.

Senator Kinsella: Is the honourable senator of a similar view with regard to the promise to the Canadian people that the Prime Minister made in writing in 1993 that should a Liberal government be elected, it would bring in legislation in the first session of Parliament after the election? According to the honourable senator's interpretation, did that mean he might take it to cabinet? I suppose a supplementary question would be: Does the honourable senator have any knowledge that the Prime Minister took the matter in question to cabinet?

Senator Day: I will take that as a rhetorical question. I am not in a position to respond.

Senator Lynch-Staunton: Why did he break his word?

[Senator Day]

Senator Comeau: The honourable senator indicated that Madam Robillard said that the only thing to which she would agree was to take the request to cabinet; that she could make no commitment, and that it would be up to her cabinet colleagues.

Given that this is Parliament, why do we not act on this matter? We do not need to have the cabinet come back to us and say, "yes" or "no" to whistle-blowing. We have received representations from people who need this protection right now. We have the example of the Office of the Privacy Commissioner.

Rather than wait for a possible new cabinet — and it is no deep, dark secret that there is a change of government going on, à la Mexico. Let us do it now. As parliamentarians, we have that power. We do not need to have cabinet come back and say, "Oh well we have decided that Mr. Chrétien's promise of 1993 is no longer valid because he is no longer the Prime Minister. This is a new administration."

Pass this amendment and keep the promise that was made all those years ago, and on which people voted. The honourable senator will recall that promise. He was one of the voters at that time, hanging on every word in the Red Book. Let us do it now. We have the power. We do not need to wait for cabinet.

Senator Day: I thank the honourable senator for his question. My answer is that our committee — of which the honourable senator is a member — carefully considered that position. We accepted the wise counsel of Ms. Fraser and many others who indicated that whistle-blowing legislation should be stand-alone legislation and should not be part of Bill C-25. Therefore, we should vote against this amendment.

If the honourable senator wishes to make those same submissions with respect to the Honourable Senator Kinsella's bill, Bill S-6, we will discuss the matter at that time.

Senator Comeau: Honourable senators, I wish to address the impression that the honourable senator left when he said that the committee voted in a certain way. I was a member of that committee, but the committee rejected the amendment as a result of the votes of the majority of the members on the committee.

This amendment is now before this chamber. We also have the power to say "yes" or "no." If the majority of members on that committee on that day can say "no" to the amendment, this group in this chamber can say "yes." Simply because the committee said "no" does not mean that this chamber must say "no."

Senator Day: I understand the honourable senator entirely. I was urging this body to accept the thorough work of the committee where this matter was canvassed extensively.

Senator Kinsella: If the key difficulty is the question of stand-alone legislation, can we take from the comments of the honourable senator that he would join with the former members in the last session of the Standing Senate Committee on National Finance, who supported the stand-alone bill, and that he would support Bill S-6, which is a stand-alone bill?

Senator Day: The honourable senator will appreciate that I cannot provide a commitment of that nature as deputy chair of the committee without thoroughly studying the matter before the committee.

The Hon. the Speaker: Honourable senators, are you ready for the question?

Some Hon. Senators: Question!

The Hon. the Speaker: It was moved by the Honourable Senator Kinsella, seconded by the Honourable Senator Atkins, that the bill be not now read a third time, but that it be amended —

Senator Carstairs: Dispense!

Senator Kinsella: Insofar as I expect there to be unanimous support for the amendment, and I would like to hear that unanimous support soon, I think we should dispense with the reading of my amendment.

The Hon. the Speaker: Honourable senators, I will dispense with the reading of the amendment and proceed to the question.

Those in favour of the motion in amendment, will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those opposed to the motion in amendment please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "nays" have it.

Some Hon. Senators: Oh, oh!

And two senators having risen:

The Hon. the Speaker: Call in the senators.

Hon. Terry Stratton: Honourable senators, I would recommend deferring the vote until tomorrow at 3:30 p.m., with a half-hour bell.

Hon. Bill Rompkey: I agree.

The Hon. the Speaker: Honourable senators, the opposition and government Whips are both entitled to defer the vote until

tomorrow, under our rules, to 5:30 p.m. However, they have suggested a vote at 3:30 p.m., with a bell at 3 p.m.; is it agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: The vote will be taken at 3:30 tomorrow with the bells to ring at 3 p.m.

BILL RESPECTING THE EFFECTIVE DATE OF THE REPRESENTATION ORDER OF 2003

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Smith, P.C., seconded by the Honourable Senator Léger, for the second reading of Bill C-49, respecting the effective date of the representation order of 2003.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, the arguments against this bill are exactly those which we on this side advanced in 1995, when the government of the day, for strictly partisan reasons, urged an amendment to the Electoral Boundaries Act. The only difference in intent then was that the government wanted redistribution to be delayed long enough so that the 1997 election could be held on boundaries established following the 1981 census, rather than those arising from redistribution based on the 1991 census, the completion of which was well under way.

The official argument put forward was that, after lengthy experience, it was only appropriate, as Senator Carstairs, the sponsor of Bill C-69, said at the time, that after some 30 years the current process was in dire need of a thorough review and update. The real reason, of course, was simply and crudely self-serving.

At the time, I said, as reported in *Debates of the Senate* of May 2, 1995, page 1555:

What sparked what has become Bill C-69? It was a request by certain members of the Liberal Party, particularly from Ontario, who had just been elected in 1993. Having seen the revised maps, which had been published, they were terrified that if the maps were adopted, at the next election they would be running in ridings completely different from the ones in which they were elected, and their chances of being defeated would rise accordingly.

• (1450)

I continued:

I am not making this up. This was admitted by members of the caucus themselves. Let me quote one of them. On May 5, 1994 on a CBC *World at Six* report on the Senate's approach to Bill C-18, the reporter, Jean Carter, said:

Many Liberals won seats for the first time in last October's election. They don't want to fight the next election on new turf. Other MPs like Sarkis Assadourian from Toronto worry about their ridings disappearing altogether.

Then Sarkis Assadourian, the member from Don Valley North, says:

I worked twenty years to get here. Within two months I lost my seat, which is not fair.

Faced with Senate opposition to this self-serving bill, a number of Liberal MPs complained bitterly about what they interpreted as contempt by the Senate because an unelected house, according to them, was interfering in what they brazenly claimed was the exclusive right of elected members to themselves determine how and on what basis their elections should be held.

I suggest that this attitude, shared by too many, showed contempt for the electoral process because it was an abuse of authority that cannot be justified. Indeed, this contempt went against all that was behind the Electoral Boundaries Readjustment Act when it was introduced nearly 40 years ago, to put an end, once and for all, to decades when standards were lower, gerrymandering was the rule rather than the exception, and constituency boundaries were determined in large part to favour the majority party.

The Electoral Boundaries Readjustment Act of 1964 gave this responsibility to non-partisan commissions in each province and the Northwest Territories. Interested parties, including elected and aspiring members, can make representations at various stages, but the commissions make the final determination, which is then proclaimed in the *Canada Gazette* to come into effect one year later.

I cannot mention the redistribution commission's work without highlighting how successful they have been this time in coming well within the 25 per cent tolerance when determining boundaries. While Elections Canada fixes the number of ridings and the number of individuals each riding should ideally have, that figure cannot be applied to all, given the concentration of population in some areas of our country coupled with vast areas with sparse populations elsewhere. Added to this are certain constitutional requirements directly affecting the process, making it impossible to have the same number of voters in each constituency.

The Electoral Act provides for this by allowing a 25 per cent deviation from the quotient. Many feel that this is too generous. The Lortie commission recommended it be lowered to 15 per cent, and there are some who feel that it could be lowered to 10 per cent, or even 5 per cent, given advance technology that makes it so much easier and faster to determine boundaries.

Now, without going into detail, the commissions have done an excellent job to the point where the vast majority of the 308 ridings are now below the 10 per cent quotients, and some are even below 5 per cent. Let me also add that elected members who complained to the commissions, strictly for electoral advantage with few exceptions, had their complaints dismissed. Honourable senators interested in reading how the commissions dispose of the complaints can find them province-by-province on the Elections Canada Web site. That will do their hearts good.

The new boundaries are official as of last August 25 and will be in effect for any election called on or after August 25, 2004. Contrary to Senator Smith's claim on Monday, an assertion repeatedly heard from the government side to obscure its true intent, that Bill C-49, "creates seven new seats in the House of Commons," Bill C-49 does no such thing. Let me repeat that the additional ridings were confirmed on August 25, 2003, and Parliament has absolutely no authority to make any changes whatsoever to what the proclamation order contains, except for the date, obviously. However, that is not part of the proclamation order but it is in the act.

Today, we are being asked once again to approve amendments to the one act which should be beyond partisanship to favour the government party strictly for partisan reasons. Senator Smith also tried to convince us that it was only natural that a new party leader assuming the prime ministership should want to capitalize on the enthusiasm created by the event by holding an election at the earliest opportunity. He mentioned Messrs. Trudeau and Turner and Ms. Campbell as wanting a mandate on that basis. However, his examples do not at all support this argument. In Mr. Trudeau's case, while he was named leader some two-and-a-half years after Mr. Pearson's election, we must remember that Mr. Pearson was Prime Minister of a minority government and it was only natural that Mr. Trudeau would want to have a majority government. Thus, it made a great deal of sense that he should call an election as soon as possible to capitalize on, as we all remember, the extraordinary enthusiasm for him at the time.

Mr. Trudeau left office in June of 1984 and Mr. Turner called an election for September, four years and seven months into the government's fourth mandate. He did not have much leeway. We all remember that Ms. Campbell began her prime ministership in June of 1993 and the government's mandate ran out in November of that year. She had to call an election soon after taking office because she had no choice.

Those last two examples are unlike what Senator Smith maintains — that the new leaders had no choice but to call an early election and, in the first example, Mr. Trudeau quite rightly used an early election call to achieve a majority government, which of course he did very successfully. In no case did any of the three leaders mentioned ask for an amendment to the Electoral Boundaries Readjustment Act to favour their particular position.

Contrary to eight years ago, when we were being urged to delay because the whole process needed, as Senator Carstairs said, "a thorough review and update," we are now informed that the one-year delay is no longer necessary and that shortening it by a few months is in order. In fact, in its report of 1991, the Royal Commission on Electoral Reform and Party Financing, better known as the Lortie commission, recommended that the delay be six months. Earlier this year, the Chief Electoral Officer of Canada confirmed that he could have everything in place by the end of March 2004, in a statement reconfirming what he had said many years ago that, in effect, a six-month period is feasible.

Why is it then, as Senator Tkachuk asked earlier this week, that the government did not ask for a change in the delay even before the current redistribution process began on March 12, 2002? Actually, I am incorrect. That is my question. Senator Tkachuk asked why there is only a one-time exception to the one-year delay. Why has the government not proposed an amendment to shorten the delay permanently, rather than have it apply to the next election only? There is only one answer: implementing the new electoral map any time after April 1 is being urged for one reason and one reason only: to allow the new leader of the Liberal Party to call an election soon after being sworn in, rather than have to wait until late summer if his or her intention is to do so only after the additional seats become eligible, which will be in late August of next year.

When the government was arguing the opposite — to delay redistribution until after the 1997 election — Senator Carstairs maintained that the proposed legislation would allow that, when she said at page 1556 of Hansard of May 2, 1995:

...new electoral boundaries based on the 1991 census would be in place by December 1997 at the very latest. That date, honourable senators, represented a government mandate of four years and two months.

During the past 35 years, every majority government has had a life span of at least four years and two months, so this amendment would have gone a long way to ensuring that the next regularly scheduled general election would be held on the basis of the new 1991 census boundaries...

As it turns out, the party conveniently forgot the impression made at the time that no election would be called before December, by calling one in June of 1997. Thanks to Progressive Conservative opposition and its persistence, Bill C-69 was defeated, and the June election was held on boundaries arising from the 1991 census.

• (1500)

The government has also forgotten its endorsements of four-year mandates for majority governments. The 1997 election was held less than three-and-a-half years after the previous one, while the election in 2000 was three-and-a-half years after it, and

changes proposed in Bill C-49 are intended to allow another election after only some three-and-a-half years. Why? It is because the Liberal Party will have a new leader then, and it is convinced that the momentum created by new leadership will work to the advantage of the ruling party if it is followed by a quick election — and there are still many months left in the mandate during which that momentum could be lost.

While it is very well for Elections Canada to say that it can have everything in place by the end of next March, so as to allow an election to be called with a new electoral map in place any time after that, has anyone even considered the tremendous stress this would put on all political parties, as it will add to totally new requirements under the Canada Elections Act, Bill C-24, passed earlier this year.

Much prominence was given during debate to the main purpose of the act, which was, in effect, to eliminate significant non-individual contributions and replace them largely with public funds. What was neglected in the discussion are the obligations imposed on each registered party to register riding associations by January 1, 2004, otherwise, certain benefits under Bill C-24 will not be available.

Applications for the registration of riding associations must include the names of not only their presidents and executives, but also each must have an auditor and a financial agent within six months of registering. An association must provide financial statements, and within five months of the end of the fiscal year, provide an exhaustive list of every financial transaction, as well as a balance sheet.

As reporting requirements become more complex, it is getting more difficult to find volunteers to not only meet these requirements, but also accept to be legally responsible for them. The list of new requirements is endless — and one wonders to what purpose, in many cases. The point is, however, can all registered parties, to maintain their status, fulfil their obligations under Bill C-24 by December 31? I do not exclude the majority party from this question.

What about the two parties whose leaders have agreed to engage in consultations with their respective memberships on merging into one political party? The decision will only be known on December 6. Is it realistic to believe that, if a merger of the recognized parties is approved, then, as opposed to the registering of a new party as such, the new entity can meet the end-of-the-year deadline? If the two leaders' proposal is agreed to, the leader of the new party will be chosen in mid-March of next year. While the two entities, which may be merged, are now doing their utmost to meet separately the end-of-the-year requirements, at all times they are conscious of the fact that they may have to start all over again as one entity by the end of March next year. They are conscious during all this time that Parliament is considering calling an election on the new boundaries any time after April 1.

Until Mr. Martin's public musings last July, all parties were working under the impression that the new boundaries would not be finalized until next August. These musings led the Chief Electoral Officer to write a letter a few days later to the Chairman of the Standing Committee on Procedure and House Affairs — a Liberal — in effect saying — I just read in the paper that your next leader might want to call an election next spring with new boundaries in place by then. You know what? I can do it.

A copy of the letter was sent to the Leader of the Government in the House, a Liberal; the Chairman of our own Standing Senate Committee on Legal and Constitutional Affairs, a Liberal; and to the Chairman of the Subcommittee on Electoral Boundaries Readjustment of the Standing Committee on Procedure and House Affairs, a Liberal. No other party is noted as having received a copy of this letter.

Honourable senators, only the Chief Electoral Officer can explain his haste to please. I am sure that all of us look forward to being convinced that he acted with the same impartiality that has marked Elections Canada since its creation.

The letter outlines some of the steps that must be taken by Elections Canada to meet the April 1 date. Nowhere in it is there any suggestion that all registered political parties, including the one urging the change, be canvassed at the outset to ascertain what problems setting an earlier date might cause them — particularly as a shortened delay would accelerate adjusting to 308 ridings at the same time as Bill C-24 requirements are being met for the first time.

In closing, let me say that, whatever is said by Senator Smith and others, this bill has but one goal: to allow a person, whose involvement in the present government has been as nearly pronounced as the retiring Prime Minister's, to call an early election on the phoney basis that, as a brand new leader, completely detached from those he was so closely associated with for nearly 10 years, he requires confirmation from the electorate for a new mandate at the earliest possible date. The Electoral Boundaries Act was never intended to be manipulated to favour a thirst for power. The Senate must not be a party to such unheard of, crass tampering with legislation strictly for partisan purposes.

Honourable senators, one of this place's finest moments was to reject, in 1995, amending the Electoral Boundaries Act strictly for partisan purposes. I trust that the Senate will distinguish itself again when Bill C-49 comes to a final vote.

Hon. David P. Smith: Honourable senators, I should like to ask Senator Lynch-Staunton a question. In spite of his comments here in this chamber, actions speak louder than words. This bill was adopted overwhelmingly by the other place at third reading by a vote of 175 to 30. In fact, all Progressive Conservative members who voted, with the exception of one, Rick Borotsik, voted for it, as did four of the five parties, with the exception being the Bloc.

Could the honourable senator advise the Senate if his caucus is now asking that senators on that side of the chamber oppose this legislation, which their members voted in favour of in the other place?

Senator Lynch-Staunton: Honourable senators, I will not reveal what my caucus colleagues ask me to do or ask me not to do, but I would suggest that Senator Smith look into the history of the disposition of legislation in this place. He will find many occasions where the will of the elected representatives has been seriously altered, if not rejected. I would mention one instance in particular. Members of the House, including opposition members, overwhelmingly approved the Pearson Airport bill because they were given false information on how the contract had been negotiated. It was rejected in this place, and rightly so. Many members of the House of Commons, including some Liberals, still feel that they were bamboozled into voting based on false information.

That is the purpose of this place. It is to look into the actions of the other place, and to consider not only their decisions and on what they were based, but also, if we find any flaws or additional information, to act accordingly. I am sure that with this bill, we will be able to do the same exactly that.

Senator Smith: Perhaps the honourable senator could tell us if, in fact, there has been any false information? If we set parties aside — four of the five parties voted for it, including his — does the honourable senator believe that, since this is legislation that affects the other place in a most direct way, we know better how they should determine matters affecting them directly than they do themselves?

Senator Lynch-Staunton: The last people who should determine how the electoral process should be devised are those who want to take advantage of it or feel penalized by it. That was the point that was made in 1995. They tried to have the new boundaries delayed out of absolute self-interest. They should stay out of it. To suggest that fellow Canadians who are not in the House of Commons should not be involved in devising the process, is absolutely ludicrous.

Hon. John G. Bryden: Honourable senators, may I be permitted to ask a question? Is the honourable senator taking notes?

Senator Rompkey: He is writing his point of order.

Senator Bryden: Am I to believe from what has been said, that the party in the other place that will be the controlling interest in the new Conservative Party is also in favour of delaying the coming into force — making this effective April 1?

• (1510)

Senator Lynch-Staunton: Honourable senators, I will answer that question directly. I do not feel beholden to decisions taken by my elected colleagues. I feel beholden to my responsibilities of this place to review those decisions. If it happens that I should disagree with them, so be it.

Senator Bryden: Honourable senators, would it not trouble the honourable senator if eight new ridings, many of which are in Western Canada, would be left out of participating if indeed we have an election prior to August 1?

Senator Lynch-Staunton: Honourable senators, the definition of the seven, not eight, electoral boundaries is already in place. They will not come into effect until August 25. It would trouble me even more to change the date those boundaries go into effect to favour one person in particular.

Surely, the new leader can wait a few months if he insists that the next election should be called with the new boundaries in effect. What is the difference between April and August, except self-interest?

Senator Bryden: Honourable senators, with all due respect, I cannot understand why the honourable senator would take that position. We will enter this election with a new leader, and my friends on the other side will enter the election with not only a new leader but also a new party. Think of the momentum that will be created by that. Does the honourable senator not want to take advantage of that momentum as quickly as possible and allow those four seats in the West to be brought into the fold if there were the opportunity?

Hon. Marcel Prud'homme: Honourable senators, I am not rising to adjourn the matter, but to speak to the bill.

I regret Bill C-49. I have been involved for the past 40 years in the electoral process. I was elected under a bad system, and the bad system was corrected over the years. There is a living witness to that present here. Senator Sparrow is the last appointee of Mr. Pearson, a reformer in many ways under a minority government.

I like very much the new system. We took it out of the hands of my predecessors, including my predecessor with the record for longevity as a parliamentarian of 54 years and a few months — the Honourable Senator Azellus Denis. He served for 28 years in the House of Commons. He was always involved with other colleagues on redistribution. He served for 26 years here until he could retire. He died at the age of 84. He served for 54 years and is the only person with over 50 years of service to Canada.

Of course, he disagreed when we changed the system. It was embarrassing for me because I succeeded him. He had clashed with my father in 1935 over a certain issue. My father, being

gentle, supported Mr. Denis all of his life. That made it very difficult for Mr. Azellus Denis to not support me in 1964, even though I was not his choice. I say that very kindly. I was not his choice. He thought I was too young.

I then saw the change to take away from the elected people the ability to gerrymander. I saw the gerrymandering as a student because I participated in it at the University of Ottawa from 1953 to 1958 or 1959, at which time I was expelled because I was too active in political activities. I did not like gerrymandering, but it was enjoyable to be trusted to be present with old timers who were changing streets and villages.

The reform came and it worked. It worked well. I will disagree with the next bill to change the names of the districts.

We give a mandate to commissioners. We give the ability to make an appeal. I appealed personally. I went to court with Senator Nolin, who represented the Conservatives. We were better prepared than everyone else and we won — twice.

We went through the process according to the law. I say that for the new senators. The older senators will remember. We played with the rules according to the law. We went to court and we were heard.

Honourable senators, we got everything we wanted. I will not bore you with the details.

I know there is new technology. I am ready to make a concession to my friends in the Liberal Party. I may join the new party that may be created, or I may return to the fold. I do not know. Perhaps I will remain here. If I am invited to join by Senators Sparrow and Smith, I will consider that much more seriously.

The law should have been amended. I would have had more difficulty opposing an amendment to the Elections Act. Why? It is true that I had discussions with Mr. Kingsley. I will not embarrass him, but I told him that the delay of one year seems to be unreasonable in a modern society with computers.

I do not know how these machines work. I still use the telephone and my pen. I have people who are more modern than I am. If we have a long recess, I assure you that some senators will modernize me. Senators De Bané and Nolin will bring me up to date in the new technology. However, I do know that with the new technology we could get what is being offered permanently.

Senator Smith is a long-time friend, since 1961 as a Young Liberal. I was surprised to discover that it is not an amendment for the duration of time. I stand to be corrected, but it is only good for this time.

Surely in the future there will be another census and more maps. They will more accurately represent what is taking place.

I would have preferred an amendment. Senator Smith is the godfather of this bill. I do not like people who play games as I have seen being done last week behind the curtain and almost lying to colleagues and asking for support.

That is not addressed to Senator Smith. I am referring to other events to take place later this afternoon. However, I do want Senator Robichaud to adjourn as soon as possible in order that I can accommodate a fine gentleman, Senator Kroft.

[Translation]

I should speak French. This might draw attention to me.

[English]

I planned to pay a compliment to Senator Kroft because I like to accommodate him. He is a fine gentleman. However, I wish that Mr. Robichaud would accommodate us as well.

I regret that it is not a permanent amendment. It will look better. It will look good. You could have had exactly what you wanted by proceeding, and I stand to be corrected by experts in the last row of this place and on the first row of the other side. I thought it was to be permanent, but it is a temporary adjustment for a temporary series of events.

• (1520)

I do not know if the Senate is of that mood, honourable senators. I will not abuse; I want to keep some strength. I know I will not be able to speak on the last three items on the agenda, but I regret we are being pushed to accept this situation. I do not know why we should wait any longer, and I do not want to accommodate the government, either. I think we have all made our point.

You want to go to committee, then you go to committee. People who have objections will go and when you come back here, you will see what they will do. I do not think we should — not boycott — but go further on this issue, in this sense. Then Senator Robichaud will smile and say, “He is nice at the end. He is accommodating my agenda.” Of course, you have an agenda, you want to do it but at least it must be on the record that some of us are not a — I was going say “moron,” but this is an expression that is not to be used after it was used so well recently in our relationship with the United States by some person for whom I have a great devotion because I know her father. Having said that, I regret, so I will wait for the vote and vote accordingly.

On motion of Senator Stratton, debate adjourned.

[Senator Prud'homme]

AMENDMENTS AND CORRECTIONS BILL, 2003

SPEAKER'S RULING

On the Order:

Second reading of Bill C-41, An Act to amend certain Acts—(*Speaker's Ruling*).

The Hon. the Speaker: Honourable senators, yesterday, Tuesday, October 28, Senator Kinsella raised a point of order to again challenge proceedings on Bill C-41. That followed my ruling addressing a point of order that had been raised in connection with the rule of anticipation. This new point of order invokes the same question rule which prohibits the consideration of substantially the same question a second time once the Senate has pronounced itself. In substantiating his position, the Deputy Leader of the Opposition cited rule 63(1) of the *Rules of the Senate* which provides that:

A motion shall not be made which is the same in substance as any question which, during the same session, has been resolved in the affirmative or negative, unless the order, resolution, or other decision on such question has been rescinded...

[Translation]

In this case, the senator is claiming that since clause 30 of Bill C-41 is identical to an amendment that had been proposed and negatived to Bill C-25 at third reading, it is no longer possible to proceed with the consideration of Bill C-41 because of the same question rule. Various authorities and precedents were cited to bolster this position. References were made to *Erskine May*, the British parliamentary authority, as well as to *Beauchesne*, the standard Canadian text, and a ruling of Speaker Francis from the other place.

[English]

Senator Robichaud challenged this point of order and expressed doubt about Senator Kinsella's interpretation of the same question rule. The Deputy Leader of the Government also took note of the fact that this is the fourth point of order with respect to Bill C-41. Points of order have been raised continually and have thus far kept the Senate from considering the second reading motion. Senator Robichaud raised some concern about possible obstruction.

[Translation]

Other senators participated in the debate including Senator Prud'homme, Senator Bryden, Senator Lynch-Staunton, Senator Rompkey, and Senator Nolin. After their interventions, Senator Kinsella reiterated his basic position and stated that “the rule is clear: You cannot bring the same question before us again.”

[English]

I wish to thank all honourable senators for their contribution to my understanding of this point of order. I have considered the arguments that were made and I have reviewed the relevant authorities. I am now ready to make my ruling.

The same question rule, as Senator Kinsella explained, is an established part of parliamentary practice. In fact, I believe the same question rule is observed in many parliaments and legislatures patterned on the British model. In the Senate, as was pointed out, it is also an explicit part of our rules. The purpose of the same question rule is to avoid the wastage of time and effort in reconsidering a question that is already a decision of the house. To do otherwise, to ignore the integrity of the decision, would lead to an abuse of process.

Within this context, the same question rule applies only to questions that are moved and decided in the Senate. It cannot apply to questions that are received from the other place. The rule is not intended to thwart the ability of the Senate to properly pursue its work, particularly in the consideration of legislation, including bills that come to the Senate from the other place.

[Translation]

Essentially, I am being asked to rule Bill C-41, or a part of it, out of order because it contains a provision, clause 30, that is identical to a third reading amendment to Bill C-25 that was moved and defeated. To accede to this request, I must be satisfied that the question before the Senate is one that has been previously moved in the Senate and that it is the same in substance.

[English]

Is this in fact the case? There is little doubt that the defeated amendment to Bill C-25 is identical to clause 30. This fact alone does not fully meet the requirements of the same question rule. It is not sufficient in itself to oblige me to rule all or part of Bill C-41 out of order.

Bill C-41 comes to the Senate from the House of Commons. It is a legislative measure that proposes to amend or correct a number of laws, including Bill C-25. Clause 30 is only one element of this bill. According to my reading, Bill C-41 seeks to change more than ten Acts. Clause 30 is not the only question that is being placed before the Senate for resolution through this bill.

To accept the point of order, it would be necessary to sacrifice the consideration of all the other elements of Bill C-41 that are obviously different questions. Such a proposition is clearly unacceptable. Alternatively, I am being asked to suppress clause 30, but this, too, is unacceptable because it would impose what is, in effect, an amendment by the Speaker. I do not believe that I have the authority to take such action, even if it were appropriate.

The same question rule has been invoked to prevent consideration of Bill C-41 in its present form because one element of it is identical to a defeated amendment to Bill C-25. The same question rule cannot be used in this way. It would be too restrictive and would prevent the Senate from properly carrying out its work. Rule 63(1) states that:

A motion shall not be made which is the same in substance as any question which, during the same session, has been resolved in the affirmative or negative...

Clause 30 is not a discrete question; it is part of Bill C-41. Unlike the defeated amendment to Bill C-25, clause 30 has not been proposed in the Senate either as a motion or an amendment; it is part of a bill from the House of Commons. Moreover, there is no doubt that Bill C-41 is not the same "in substance" to Bill C-25 or to the defeated amendment. Bill C-41 has been duly passed by the House of Commons and has been placed before the Senate for its consideration. The task of the Senate is to review this bill in accordance with established practices and procedures.

It is my ruling that there is no point of order in this case, and that the Senate should now proceed to second reading of Bill C-41.

• (1530)

SECOND READING—DEBATE SUSPENDED

Hon. John G. Bryden moved second reading of Bill C-41, to amend certain Acts.

He said: Honourable senators, I am pleased to move this today. Although it has taken a long time for me to get to my feet, I do so with the reassurance that I received yesterday from Senator Lynch-Staunton, the Leader of the Opposition, that he and his side are in support, basically, of the substance of this bill. Nevertheless, I think it is useful to mention the things covered herein, and I will do that as quickly as possible.

The bill proposes minor corrections to a number of statutes to ensure that our laws are accurate and up to date. This is the second technical corrections bill that the government has introduced. Last year, Parliament passed Bill C-43, which we have discussed, making corrective amendments to a variety of statutes.

Although the purpose of Bill C-41 is to make technical corrections to our statutes, it is not designed to replace the miscellaneous statute law amendment program. Several of the amendments of Bill C-41 require the expenditure of funds and would not fit the strict requirements of the MSLA program. I will briefly highlight the amendments in Bill C-41.

The first amendment relates to Lieutenant Governors. I do not think it relates to former lieutenant governors, of whom we have two in this place. Several provisions of the bill update the disability provisions for lieutenant governors, consistent with the recent changes made in parliamentary compensation. Honourable senators will recall that in 2001, the disability provisions for parliamentarians were updated. The 2001 changes provided disability benefits for parliamentarians aged 65 or over. Prior to that, a parliamentarian could not be covered for a disability. Parliamentarians are now able to continue to contribute to their pensions while they receive their disability benefits. For example, senators who become disabled are able to receive disability benefits until age 75, and this period of time is included in the senator's pensionable service.

Bill C-41 would update the disability benefits for lieutenant governors on a similar basis. Disability benefits would be available for lieutenant governors aged 65 years of age or over for a period of up to five years. Currently, disability benefits are only paid to those under 65 years of age. Lieutenant governors would be able to contribute to their pensions while they receive their disability benefits.

A number of the proposed amendments relate to appointments. Several amendments clarify the provisions for certain appointments. For example, the French title for the Deputy Commissioner of the Canada Customs and Revenue Agency would be changed from "commissaire adjoint" to "commissaire délégué", which is a more correct term. The title for the Executive Director of the National Round Table on the Environment and the Economy would be changed from "Executive Director" to "President," which is a more up-to-date title. The bill would clarify the definition of "officer-directors" in the Financial Administration Act.

Bill C-41 makes corrections in relation to customs. The Customs Act would be amended to provide the correct references to the Canada-Costa Rica Free Trade Agreement in the French version of the text. The Importation of Intoxicating Liquors Act would make direct reference to the list of tariff provisions set out in the schedule to the Customs Tariff consistent with other provisions.

There are some retroactive corrections as well. First, Bill C-41 would make an administrative correction to ensure the authority for consular service fees collected for the period from April 1998 to January 2003. An administrative correction is necessary due to a procedural error that took place when these fees were enacted in 1998.

Second, the bill would provide for the retroactive payment of compensation to chairs and vice-chairs of special committees. Earlier this year, parliamentary compensation was updated to provide chairs and vice-chairs of special committees with the same compensation as that for chairs and vice-chairs of standing committees. However, this change was not made retroactive, and previous chairs of special committees cannot qualify for additional compensation. Bill C-41 would correct this situation by making these payments retroactive to January 1, 2001, the same date that chairs and vice-chairs of standing committees began receiving additional compensation. Although this issue has been the subject of more interest in the other place, a parallel provision for special Senate committees was added to ensure parallel treatment for both chambers.

In conclusion, honourable senators, these amendments are technical in nature and do not make any major policy changes. I hope that honourable senators will support the passage of this bill, but in particular I hope we can soon move this bill into the committee stage where it can be examined in detail on behalf of the Senate.

Debate suspended.

[Senator Bryden]

BANKING, TRADE AND COMMERCE

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Richard H. Kroft: In accordance with earlier discussions, honourable senators, I rise now to move, with leave of the Senate and notwithstanding rule 58(1):

That the Standing Senate Committee on Banking, Trade and Commerce have power to sit at 4 p.m. today, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. John Lynch-Staunton (Leader of the Opposition): As an ex officio member of the committee, I intend to attend because this bill has a clause in it which interests me in particular, more for academic reasons than for anything else. If I am a few minutes late, I hope you will understand.

[Translation]

Hon. Marcel Prud'homme: Honourable senators, I hope that I am enough of a gentleman not to refuse the joint invitation from both Senator Kroft, my distinguished and very effective Chair of the Committee on Banking, Trade and Commerce, and the Leader of the Opposition, who is going to honour the committee with his presence. I will say yes, but I will remain in the Senate chamber until we adjourn. I do not know if the Speaker could find a way to indicate my presence. I would not like to read in the *Ottawa Citizen*, in two or three months, that Senator Prud'homme was present 100 per cent of the time in this chamber and present almost 100 per cent of the time in committee and, therefore, that he is not interested in his committee because he missed three sittings. The truth is that I sit in the Senate. No, I do not take any of the 21 days of sick leave, nor any others, as I should.

I hope that the committee will sit long enough. I would like it if Senator Robichaud could organize our schedule so that I could dash over to the Standing Committee on Banking, Trade and Commerce to hear Senator Lynch-Staunton. I say yes to the honourable senator's motion.

[English]

The Hon. the Speaker: The question of leave is not conditional. I take it leave is granted?

Hon Senators: Agreed.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to.

AMENDMENTS AND CORRECTIONS BILL, 2003

SECOND READING—DEBATE ADJOURNED

On the Order:

Resuming debate on the motion of the Honourable Senator Bryden, seconded by the Honourable Senator Robichaud, P.C., for the second reading of Bill C-41, An Act to amend certain Acts.

Hon. John Lynch-Staunton (Leader of the Opposition): As Senator Bryden reminded us, I said yesterday that we had no objection to this bill. We have not engaged in obstructionism. We were and are still convinced, despite the respect we have for the Speaker's rulings, that the long and short titles of this bill are flawed, that there is an argument for anticipation, and certainly while procedurally it seems proper to have the same clauses in two different bills, it is something which we find difficult to accept, but so be it: That is the way it is.

Before making a suggestion, I want to tell both Senator Bryden and Senator Rompkey that yesterday they expressed annoyance at points of order not being raised at the earliest opportunity. I would like to bring to their attention that there is no support for the argument that points of order be brought up at the earliest opportunity. In Beauchesne's 6th Edition, page 97, citation 321 states:

• (1540)

A point of order against procedure must be raised promptly and before the question has passed to a stage at which the objection would be out of place.

Citation 317, from the same authority, states:

Points of orders are questions raised with a view of calling attention to any departure from the Standing Orders or the customary modes of proceeding in debate or in the conduct of legislative business and may be raised at virtually any time by any Member, whether that Member has previously spoken or not.

Therefore, the point of order brought forward yesterday was in fact raised at the first possible opportunity, but the only requirement is that it be raised before the matter had been rendered moot by subsequent events. I wanted to clear that up.

As for the bill itself, I have no objection to it going to committee right now. I would even suggest that we ask our Standing Committee on Rules, Procedures and the Rights of Parliament to set aside all business before it. We could then present the bill to them immediately so that they could dispose of it as expeditiously as possible.

The Hon. the Speaker: Is the house ready for the question?

Hon. Senators: Question!

The Hon. the Speaker: It was moved by the Honourable Senator Bryden —

Hon. John G. Bryden: I just want to know what we are voting on.

An. Hon. Senator: Second reading.

Senator Lynch-Staunton: Are you raising a point of order?

The Hon. the Speaker: I will answer the honourable senator's question.

Senator Bryden: If we agree to this motion, do we agree with sending this matter to the Rules Committee?

Senator Lynch-Staunton: There was some sarcasm in that statement.

The Hon. the Speaker: Honourable senators, I think I should start over. I will put the question.

It was moved by the Honourable Senator Bryden, seconded by the Honourable Senator Poy, that this bill be read the second time now.

Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

[Translation]

Hon. Pierre Claude Nolin: Honourable senators, I would like my abstention to be recorded, since, under rule 65(4), I have a pecuniary interest in this bill, relating to clause 24.1 of the bill.

[English]

The Hon. the Speaker: To be certain that the honourable senator's abstention is recorded, I will say "on division."

Motion agreed to and bill read second time, on division.

REFERRED TO COMMITTEE

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator Bryden, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

CHILDREN OF DECEASED VETERANS
EDUCATION ASSISTANCE BILL

SECOND READING

Hon. Jane Cordy moved the second reading of Bill C-50, to amend the statute law in respect of benefits for veterans and the children of deceased veterans.

She said: Honourable senators, I am pleased to rise to speak on government Bill C-50. I know all of us in this place have always been committed to pass any legislation that improves benefits for veterans and their families. It is a terrible coincidence of timing that we are considering the merits of this bill within mere weeks of the tragic loss of life of two of our soldiers in Afghanistan. It reminds us once again about the risks asked of and the risks taken by our men and women in uniform. Perhaps we can take a little consolation that once passed these amendments will take care of the educational needs of the children of these fallen soldiers. I will return to that aspect of the proposed legislation, but a little history is in order first.

Last May the Minister of Veterans Affairs announced a package of proposals, the majority of which were aimed at meeting the urgent needs of our war-era veterans. Most will be effected by means of regulatory change and other changes aimed at other war-time veterans, or the children of veterans who die as a result of their service, are covered off in this bill.

I hope that honourable senators will indulge me if I discuss these proposals as a package, since they are all part of a continuum that seeks to improve the lot of our veterans and their families.

The change that has attracted the most recent attention, the one that has been in the news lately, concerned the extension of the grounds maintenance and housekeeping components of the Veterans Independence Program, or the VIP, to survivors of deceased veterans. For some years now, upon the death of a veteran recipient of VIP, the grounds maintenance and housekeeping components have been extended to the survivor for one year to allow them a period of adjustment and to make alternative arrangements in the community. When the minister made his announcement in May, he proposed lifetime continuation of housekeeping and grounds maintenance services that the veteran was receiving at the time of death. Because the funding was provided through a reallocation of departmental funds, Veterans Affairs Canada was only able to grant lifetime continuation to survivors from June 2003 onward.

Since that time, the Prime Minister has responded to the concerns of survivors, veterans organizations and other concerned Canadians by agreeing to study this issue further. The minister has indicated that his department is actively engaged in this study.

The other regulatory changes, which are coming on stream later this month or early November, are also aimed at the most senior of the department's clients. One extends health care programs to war veterans with a pensioned disability of 48 per cent or greater. It recognizes that many are now in their eighties. With the passage of time, the infirmities of old age begin to visit these veterans more frequently. As a result, it is now getting much more difficult to distinguish between a health care need that is related to a pensioned disability and one that is simply due to old age. With

the change to the regulation, those with a pensioned disability of 48 per cent or greater will get the department's health care benefits regardless of the cause of ailment requiring treatment.

Another change to the regulations involves those overseas service veterans who are on a wait list for a priority access bed. Historically, overseas service veterans have been able to access long-term care through Veterans Affairs priority access beds, or PAB. A pilot project enabled Veterans Affairs to provide VIP and health care benefits to overseas service veterans who were living at home while waiting for a priority access bed to become available. The pilot was expanded nationally in November 2001. Changes to the regulations formalize the pilot and allow Veterans Affairs to continue to provide VIP and, as a consequence, health care benefits to overseas service veterans living at home while on a wait list for a priority access bed.

In a similar fashion, veterans who are in receipt of prisoner-of-war compensation and who are totally disabled are eligible for VIP services and, as a consequence, treatment benefits. Allied veterans, those with 10 years post-war residence in Canada, through the upcoming change in regulations, will have access to long-term care and, once admitted, be eligible for any associated health care treatment benefits.

We can see a theme here, honourable senators: providing benefits in the form of health care, long-term care or VIP to the broadest spectrum possible for war-time veterans. I believe this is what Canadians would want.

Let me turn to the other announcements that the minister made last May which have found themselves in the bill before us.

• (1550)

As I mentioned at the outset, we were all seized with the horrific tragedy in Afghanistan in early October that took the lives of two of our own. We do not think about it often, but the fact is that our men and women in uniform put their lives on the line almost daily.

As we speak, over 3,600 Canadian soldiers, sailors and air force personnel are deployed overseas on operational missions. On any given day, about 8,000 Canadian Forces members, one-third of our deployable forces, are preparing for, engaged in, or returning from an overseas mission. Every step of the way they put their lives at potential risk.

On the home front, our forces assist in fighting forest fires, in cleaning up the aftermath of hurricanes and in search and rescue missions. We owe them peace of mind so that they know that, if they should be killed in service, their children's educational needs will be taken care of. Bill C-50 does exactly that.

In 1995, a decision was made to discontinue the department's Education Assistance Program which provided post-secondary education for children of veterans who died as a result of their service in uniform or who were pensioned at 48 per cent or more at the time of death. At the time, it was thought that their educational needs could best be met through other sources. This bill reverses that decision. The program is being reinstated and its provisions are better than ever. Once this bill is passed, eligible children will receive up to \$4,000 per academic year of post-secondary education. That will apply to current and future students. They will also receive an allowance of \$300 per month. Both amounts will be indexed to the consumer price index. I believe these amounts are reflective of the costs of post-secondary education today.

Education assistance at former rates will also be given to former students who completed their education after the program was discontinued in 1995. This will be of particular importance to any children of Canadian Armed Forces members who were killed in the line of duty between the date of cancellation and the date of reinstatement of the program.

In addition, children who did not attend a post-secondary institution after the program's discontinuance and who now choose to do so are eligible until their thirtieth birthday to receive benefits at the new rates established with the passage of this bill.

The next provision calls for broader and more extensive compensation for former prisoners of war. The proposed legislation will enhance the current prisoner of war compensation scale to benefit those who were imprisoned for shorter or longer periods of time. The end result will be more appropriate recognition of these veterans who suffered so much because of their wartime incarceration, including Dieppe and Merchant Navy prisoners of war who experienced some of the longest periods of incarceration.

The final item is small in substance, but large in symbolism. It clarifies the service requirements for the War Veterans Allowance Program. The pressure to make this change came as a result of a WVA applicant who had not actually served. The case was complicated and wound its way through a series of appeals and court rulings. The veteran community was upset and understandably so, I believe, at the prospect of someone receiving the War Veterans Allowance in such a circumstance. The problem stemmed from an ambiguity in the legislation that Bill C-50 now fixes. This amendment clarifies that a member of the forces, with respect to the First or Second World War must have enlisted, served, and been discharged from that service to be eligible for the WVA or War Veterans Allowance benefits.

The funding of these changes, legislative or regulatory, will come from internal departmental resources, specifically, through a reallocation of the current attendance allowance program. No

one currently on attendance allowance will be taken off. For the future, these reallocations will result in a better targeting of departmental funds to meet the precise needs of these elderly and deserving veterans.

Honourable senators, given the sobering news we have heard out of Afghanistan, I hope that all honourable senators will support, without reservation, the reinstatement of the Education Assistance Program.

The prisoner of war population would also benefit by their latter years being made just a little easier with the changes provided for in this bill.

For these reasons, I urge swift passage of Bill C-50.

[Translation]

Hon. Michael A. Meighen: Honourable senators, it is a pleasure for me to speak at second reading in support of Bill C-50, to amend the statute law in respect of benefits for veterans and the children of deceased veterans.

I want to congratulate my colleague, the Honourable Senator Cordy, for her speech, and I echo her sentiments.

Honourable senators, I believe that the Minister of National Defence and the Minister of Veterans Affairs, the Honourable Rey Pagtrakhan, should be congratulated for their efforts on behalf of veterans over the past few months.

Just prior to the summer recess, I had spoken on Bill C-44, introduced by the government to rectify certain discrepancies identified by Major Henwood of the Canadian Forces regarding the payment of disability benefits. Coverage for the upper ranks exceeded coverage for the lower ranks. Earlier this week, we dealt, at second reading, with Bill C-37, which considerably improves pensions and pension eligibility for Canadian Forces personnel.

[English]

The bill before us today, Bill C-50, amends three acts: The Children of Deceased Veterans Education Assistance Act, as it re-establishes the Education Assistance Program; the Pension Act, as it modifies prisoner of war compensation benefits; and the War Veterans Allowance Act, clarifying who qualifies as a veteran of either world war.

I am also pleased that the government took time to consult widely with veterans associations, so that the most urgent needs of veterans could be addressed.

This bill, in amending the Children of Deceased Veterans Education Assistance Act, re-establishes the Education Assistance Program, which provides post-secondary education assistance to children of Canadian Armed Forces personnel who died as a result of military service. Those children will be eligible for tuition to a maximum of \$4,000 annually and a monthly living allowance.

Bill C-50 also amends the Pension Act to broaden the eligibility criteria for prisoner of war compensation. In some cases, the benefits are increased. With this bill, all veterans who were incarcerated for at least 30 days will now be able to get some compensation.

The bill also clarifies the definition, at long last, of "World War Veteran" as contained in the War Veterans Allowance Act. It ensures that only those who actually enlisted will be able to claim benefits.

These amendments, as I understand them, are good ones as far as they go. They are supported by the major veterans' organizations. However, speaking to Bill C-50 this afternoon, also gives me the opportunity to speak to veterans' issues that have not yet been addressed and these are very briefly: First, regulating changes regarding the provision of health care benefits to overseas service veterans who are currently on a waiting list for a priority access bed; second, the provision of long-term care and treatment benefits for allied veterans with 10-year post-war residence in Canada; third, the provision, as Senator Cordy discussed, of VIP services and health care benefits to totally disabled veterans who are only in receipt of prisoner of war compensation. I believe all members of the Veterans Affairs Subcommittee will want to know when these matters will be addressed.

• (1600)

Honourable senators, I would also be remiss if I did not mention the inequity brought about by a change made in June this year to the regulation dealing with the extension of lifetime VIP benefits to war veterans' widows. As honourable senators know, and Senator Cordy touched on this, when this change was announced, it left those without such benefits and those whose benefits had expired without eligibility for lifetime compensation.

This matter was raised a number of times in debate in other place. The evidence seems to be that there are approximately 23,000 widows who would benefit if the measure were extended to everyone. At present, some 10,000 widows would be eligible for this allowance for the rest of their lives. I am pleased to tell honourable senators that, at the hearings of our Subcommittee on Veterans Affairs today, the minister told us that he was optimistic that these benefits would be extended to all widows and not just to a certain class of widows. With the minister's optimism and the Prime Minister's personal involvement, I am sure that we will follow this file closely and will look forward to the desired result.

When Bill C-50 is referred to committee, I believe we must inquire of the minister how he will meet the challenge of making this proposed legislation applicable to all surviving spouses whose one-year extension of VIP benefits had already ended. That would apply to any committee to which this bill is referred. I look forward to the discussion of Bill C-50, directly or indirectly, in committee.

Hon. Marcel Prud'homme: Honourable senators, any good parliamentarian should know how to sense the atmosphere, and I

sense that there will be a disposition to terminate now. However, I did not want to remain seated and have someone think that I am disinterested in this item.

Having served in the Armed Forces, I understand Senator Meighen's comments and what Senator Day is putting forward. Therefore, I am ready to vote on the item and I will not unduly delay referring the bill to committee. I wanted to state my interest in Bill C-50 because I was a member of the Canadian Provost Corps in Shilo, Manitoba. I know a little about the military and discipline.

The Hon. the Speaker: Is the house ready for the question?

Hon. Senators: Question!

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

The Hon. the Speaker: When shall this bill be read the third time?

On motion of Senator Cordy, bill referred to the Standing Senate Committee on Social Affairs, Science and Technology.

BUSINESS OF THE SENATE

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I rise on a small point of order. Honourable senators realize that the Senate Committee of Selection goes through a process at the beginning of a session and/or a new Parliament and adopts motions that certain senators be appointed to certain committees. As honourable senators are aware, those nominations are made keeping in mind the schedule of times set aside for meetings of the various committees. An honourable senator who attends a meeting of a committee that meets on Mondays, Wednesdays and Fridays at 9 o'clock would not be assigned to another committee that sits Mondays, Wednesdays and Fridays at 9 o'clock. The selection process is carefully completed and adopted by the Senate.

The Rules Committee is proposing to meet tomorrow at 10 a.m. and honourable senators know that at 10:45 a.m. tomorrow, the Standing Senate Committee on Legal and Constitutional Affairs is meeting. Senators from both sides, certainly from this side, who sit on both committees know that those committees are not scheduled to sit at the same time. I am further advised that the decision for the Rules Committee to meet tomorrow morning at 10 a.m. was made after the meeting of the Rules Committee had concluded today and the gavel had been brought down to end the meeting.

Members of the Rules Committee from this side were not present to say that they could not attend tomorrow's meeting because of a prior obligation to attend a meeting of the Standing Senate Committee on Legal and Constitutional Affairs.

I raise this issue now only because our whip advised the government side immediately upon receipt of this information. At 12:03 p.m. today, Senator Stratton sent a notice to the committee advising of the unacceptability of this change in schedule. I raise the matter in the house to inform honourable senators that it is unfair and truly breaches a decision that the house made when it accepted the report of the Selection Committee. Senators cannot be in two places at the same time. The Rules Committee is not scheduled to meet tomorrow because that is not its time slot. There are good reasons for honourable senators opposite, particularly the government whip, to make inquiries to try to obviate the problem.

Hon. Bill Rompkey: Honourable senators, I would be glad to make inquiries on that.

However, I have two points to make. First, the honourable senator is correct in that the Selection Committee does attempt to appoint senators to committees where there are no scheduling conflicts, but certain conflicts do arise. A number of senators on this side sit on committees that have conflicting schedules. We are not absolutely conflict-free. I wanted to make that point to the house.

Second, it is my understanding, and I will check this with the Chair of the Rules Committee, that the gavel had gone down but the decision was taken at a steering committee meeting. I will double check that information. I will be glad to make inquiries because I am aware of the strain under which the opposition is working.

Hon. Anne C. Cools: Honourable senators, I should like to add to this debate. It is not simply a question that concerns the opposition. All honourable senators who are members of committees make their plans in accordance with the schedules which are set at the outset. For the most part, committees meet at predictable times. I attended the Rules Committee today and was planning to attend the next Rules Committee meetings. However, when a committee meeting is suddenly assigned a new time it throws a wrench into any plans that one may have. I have a conflict tomorrow because I, too, am a member of the Standing Senate Committee on Legal and Constitutional Affairs.

It behooves the Rules Committee to be especially sensitive to the fact that other senators want to attend their committee meetings. The Rules Committee replaced the Committee of Privileges, which was a committee of the whole house. The Rules Committee, more than any other, has obligations to accommodate most senators. I would encourage the Honourable Senator Rompkey to do a little more than make inquiries. Perhaps he could look at keeping the Rules Committee on the ground where it should be — upholding the ability of all senators to participate.

• (1610)

Failing that, honourable senators, maybe it is time for this chamber to consider the reconstitution of the committee of privileges as a committee of the whole house. Our very first rule or second rule — one of the early ones — says the upholding of the privileges of the Senate belong to the Senate as a whole. I would encourage Senator Rompkey to do a little more than make inquiries; I would encourage him to set the matter right.

Senator Rompkey: I hear Senator Cools' encouragement. Certainly, we would like to have as many senators as there are who want to attend. All committee meetings are open to all senators.

For the record, the situation that the Standing Senate Committee on Rules, Procedures and the Rights of Parliament finds itself in now is one of trying to find witnesses so that members may question them. We heard, this morning, a recitation of witnesses that we have attempted to find. Not all of them are available and not all are available at the same time. The point I am making is that in order for senators study this issue in some depth and to hear from the proper witnesses, those we all want and have all asked to hear from, we must accommodate those witnesses too. An accommodation must be made, so we try to strike a balance between witnesses who can appear and senators who are available.

Senator Cools: I quite respect that fact and I understand the importance of accommodating witnesses. I was just saying that the first duty of the committee is to accommodate senators. I was not attempting to preclude the accommodation of witnesses.

I put forward the following serious proposition: Perhaps it is time for this chamber to look at reconstituting the committee of privileges. It is just in a dormant stage right now.

CRIMINAL CODE

BILL TO AMEND—SECOND READING

Hon. Wilfred P. Moore moved the second reading of Bill C-45, to amend the Criminal Code (criminal liability of organizations).

He said: Honourable senators, I am privileged to speak at the second reading of Bill C-45. The bill received all-party support in the House of Commons, and I believe it deserves the support of this chamber as well.

Bill C-45 is part of the response of the Government of Canada to the Westray mine tragedy, which occurred at Plymouth, Pictou County, Nova Scotia, on Saturday, May 9, 1992 and, as senators will recall, took the lives of 26 miners.

The subsequent inquiry under Mr. Justice K. Peter Richard was highly critical of Curragh Resources Incorporated, the operator of the mine, and its managers for failure to ensure safe working conditions. The four volume report, entitled "The Westray Story, A Predictable Path to Disaster," contains the following recommendation, number 73:

The Government of Canada, through the Department of Justice, should institute a study of the accountability of corporate executives and directors for the wrongful or negligent acts of the corporation and should introduce in the Parliament of Canada such amendments to legislation as are necessary to ensure that corporate executives and directors are held properly accountable for workplace safety.

Senators should be reminded that the government's primary response to the Westray disaster was to ensure that workers in federally regulated industries are protected. It did so through extensive amendments to Part 2 of the Canada Labour Code — Bill C-12, now statute of Canada 2000, chapter 20 — which mandated significant new rights for workers, including the right to be informed about hazards in the workplace, the right to participate in correcting those hazards and the right to refuse dangerous work. As well, the roles of such committees as the Workplace Health and Safety Committee and the Policy Health and Safety Committee were strengthened, and fines of up to \$1 million have been provided for a breach of the Canada Labour Code.

Recommendation 73 prompted a private members' motion and a private members' bill in the last Parliament, seeking a new codified provision covering corporate criminal liability. In the first session of the current Parliament, debate on private members' Bill C-284 led to the question of corporate criminal liability being referred to the House of Commons Standing Committee on Justice and Human Rights for its consideration.

That standing committee, in May 2002, heard from some 30 witnesses, including witnesses from the Department of Justice who tabled with the committee a discussion paper that reviewed the main issues respecting the criminal liability of corporations. In June 2002, the standing committee issued a report which recommended that:

...the Government table in the House legislation to deal with the criminal liability of corporations, directors, and officers.

I will not review for honourable senators the issues of legal theory that are thoroughly canvassed in the department's discussion paper. I would, however, like to bring to your attention two documents that are essential for understanding Bill C-45.

The first is the government's response to the standing committee report, which was tabled last November. The second document that I believe will assist honourable senators is entitled "A Plain Language Guide: Bill C-45," which the department made public two weeks ago. Both documents are on the department's Web site.

The government chose to provide a detailed response that reviews the evidence heard by the standing committee, discusses Bill C-284 and draws conclusions regarding the principles that

would guide the drafting of legislation. In the response, the government considers various models of corporate criminal liability, including the American vicarious liability model, the Australian corporate culture approach and the proposal of the Government of the United Kingdom to create a special offence of corporate killing. It also considered the personal criminal liability of officers and directors and the sentencing regime for corporations.

Most importantly, the government set out its conclusion that Canadian criminal law should be reformed to expand the class of persons capable of engaging the liability of the corporation; to provide rules in the Criminal Code regarding the liability of corporations for crimes of subjective intent and for crimes of negligence; and to provide more guidance to the courts when imposing sentences on corporations.

The government concluded that there is no need for any change in the criminal law dealing with the responsibility of directors and officers. As individuals, they are already liable for their personal actions. They can now also be charged as parties, along with the corporation, for aiding or abetting the commission of an offence, or as accessories to an offence committed by the corporation.

With respect to workplace safety, the government concluded that the criminal law should clearly impose on every person who employs or directs another person to perform work a legal duty to take reasonable care to avoid foreseeable harm to the person or to the public. Wanton or reckless disregard of this duty, leading to death or bodily harm, could be the basis of a charge of criminal negligence.

Bill C-45 transforms these conclusions of the government into the necessary amendments to the Criminal Code. The bill is not necessarily easy to understand at first blush. The plain language guide explains the provisions of the bill using concrete examples. I understand such a guide is unusual, but it was the Minister of Justice's view that Bill C-45 could have an impact on virtually every Canadian because it fundamentally changes the way our criminal law will approach the criminal liability of all organizations. I believe the minister should be commended for this initiative.

The guide provides background to current Canadian law and then answers a series of questions, including: Why does Bill C-45 refer to an organization rather than a corporation? Who are the directing minds of the organization? For whose physical acts is an organization responsible? How does an organization become a party to a crime of negligence? How does an organization become a party to an offence where intent or knowledge has to be proven? How are organizations punished for committing a crime? A perusal of the response and the plain language guide will, I believe, make clear the intentions of the government for proposing the reforms in Bill C-45.

• (1620)

Indeed, the first thing that honourable senators will note about the bill is the scope of the definition of "organization." It means "a public body, body corporate, society, company, firm, partnership, trade union or municipality, or an association of persons that is created for a common purpose, has an operational structure, and holds itself out to the public as an association of persons."

Clearly, Bill C-45 will live by the same rules for attributing criminal liability to political parties, charities, professional associations, community associations and other groups of individuals that come together to accomplish a task and, in so doing, establish some kind of structure to let the public know, perhaps through something as simple as opening a bank account under the association's name, that they exist as an association.

Honourable senators should note as well the proposed expansion of the "directing mind" basis of liability. As the government stated in its response, the fundamental question is how high up the corporate ladder must individuals be before their actions and intentions can be said to be those of the corporation. One major problem with the Canadian approach to corporate liability is the restrictive interpretation placed on directing minds under their case. The only persons considered to be directing minds under this approach are those individuals who exercise decision-making authority on matters of corporate policy.

Determining whether an individual should be considered the mind of the corporation with respect to the commission of a specific criminal offence solely on the basis that the individual can set policy is very narrow, and quite artificial. In a large corporation, the board of directors and the principal executive officers who set policy can only do so in broad, general terms and are incapable of overseeing the day-to-day operations of the corporation. They must give managers a great deal of latitude to implement the policies in the workplace.

The class of persons capable of engaging the liability of the corporation should be expanded to include individuals who exercise delegated operational authority. This change is effected through the definition of senior officer, which includes, in addition to their work as the directors and the most senior officers, persons who play an important role in the establishment of an organizational policy or are responsible for managing an important aspect of the organization's activities.

Clearly, the definition does not make the organization responsible for every person who has "manager" in his title. The key is the importance of the person's role in the organization either in contributing to making policy — for example, as a person responsible for recommending to the CEO or board of directors policy with respect to a workplace safety — or in managing one of the organization's important activities — for example, a factory.

Honourable senators will note that Bill C-45 does not make a director or any person in an organization directly and personally criminally liable. Bill C-45 deals only with making the

organization responsible for the actions and omissions of the senior officers. This is probably a disappointment to some who, in the wake of Westray, called for imposing on directors specific obligations with respect to workplace safety under the Criminal Code, with heavy penalty for failure to comply. That was the approach of Bill C-284.

The government considered this approach and rejected it in its response. It concluded that officers and directors should be singled out and have liability imposed on them, either generally or with respect to safety, simply because of the way the business is structured. They should be held criminally liable for the way they carry out their responsibilities and not be subject to criminal liability in the absence of personal fault simply because of their position in the corporation.

Honourable senators are well aware of the many obligations already imposed on officers and directors of corporations under various statutes. For example, the Canadian Environmental Protection Act provides in section 280 the following:

Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is a party to and guilty of the offence, and is liable to the punishment provided for the offence, whether or not the corporation has been prosecuted or convicted.

There are similar provisions in occupational health and safety legislation.

The proposals for imposing criminal liability all require that there be a physical act or omission by a representative of the organization and fault by a senior officer. In cases based on negligence, there must first have been negligence by the representatives of the organization when their acts and omissions, taken as a whole, are negligent. A plain language guide provides an interesting example of how this would work. In a factory, an employee who turned off three separate safety systems would probably be prosecuted for causing death by criminal negligence if employees were killed as a result of an accident that the safety systems would have prevented. The employee acted negligently.

On the other hand, if three employees each turned off one of the safety system, each thinking that it was not a problem because the other two systems were still in place, they would probably not be subject to criminal prosecution because each one alone might not have shown reckless disregard for the lives of other employees. However, the fact that the individual employees might escape prosecution should not mean that their employer necessarily would not be prosecuted. After all, the organization, through its three employees, turned off the three systems. A manager or supervisor of those three individuals should have given prior direction to them as to the significance of all three safety systems being turned off.

The next step to determine whether the senior officer responsible for that aspect of the organization's activities departed markedly from the standard of care that in circumstances could reasonably be expected. I would submit that this is fair to the organization. It maintains the essential difference between civil negligence and the kind of reckless disregard that is the proper basis for invoking the full weight of criminal law.

Similarly, in offences based on knowledge or intent, the senior officer must have been an active participant either by doing the crime personally or by directing the affairs of the organization so that others do the act, or by failing to take responsible measures to stop crimes being committed by lower level employees upon becoming aware of their criminal intent. In all of these cases, the senior officer must, however, intend to benefit the organization in some way.

Bill C-45 also contains some innovative proposals with respect to sentencing an organization. First, it proposes 10 factors that a court should consider in determining what level of fine to impose. It is noteworthy that the factors include the impact that the sentence would have on the economic viability of the organization and the continued employment of its employees. We do not want corporations crippled by huge fines so they go bankrupt, with innocent employees thrown on the street.

Second, the bill would make provision for a probation order to be imposed on an organization. There are probably many cases where the court is more interested in the corporation changing its practices and procedures to avoid committing more crimes in the future, perhaps by overhauling its safety practices or instituting more stringent audits, than it is in collecting a fine.

Third, the bill provides for a court to order an organization to inform the public of the offence of which it has been convicted, the sentence imposed and any measures that the organization is taking to reduce the likelihood of its committing a subsequent offence.

• (1630)

I wish to conclude by drawing the attention of honourable senators to the one provision in Bill C-45 that is not directly aimed at organizations. The bill proposes that a new section 217.1 be added to the Criminal Code, and I quote:

Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.

This section is a signal to all of us that we must take very seriously our responsibility to protect workers and the public when we are directing the way in which others do their work, or we have the authority to do so. If there is a breach of the duty that shows a wanton and reckless disregard for the safety of others and someone is injured or killed, a charge of criminal negligence causing death can be laid, which carries life imprisonment as the maximum penalty, or a charge of criminal negligence causing bodily harm can be laid, which has a maximum penalty of 10 years.

What is reasonable will vary with the nature of the work and the experience of the workers. Quite different precautions may be required when the job is inherently dangerous, like felling trees or deep-rock mining, than when the job is routine, like cutting grass. Moreover, the extent of supervision will vary depending on whether the person who is to do the work is inexperienced or is an old hand who has performed the job safely hundreds of times before.

Senators should remember that this duty is imposed on organizations as a whole because they are persons under the law. It is imposed individually on everyone in the organization who is directing work or has the authority to do so. The board of directors and the CEO have ultimate authority to set safety policy and standards. They can decide, for example, whether to install a back-up safety system or not to incur the expense. Further down the line, the manager must have discretion in whether to close down operations because of a suspected safety problem with the machinery, or to keep the assembly line moving. A shop foreman may also have the authority to make decisions on how work is to be performed. All of them have a personal duty.

Similarly, every individual has his duty. It would be reckless to simply hand a power saw to a 14-year-old, tell him you will give him \$100 to cut down a tree and then walk away from him. If the youth is injured or killed, that homeowner could face potential criminal charges because of this new duty if the reckless disregard of the duty amounted to criminal negligence.

Ultimately, it would be a question of fact in each case whether the duty was breached and whether the breach was so reckless that a criminal conviction is appropriate. The courts are well equipped to consider the evidence and decide these questions on the proven facts.

The question of corporate criminal liability has been under study in Canada for more than 25 years, beginning with a discussion paper by the Law Reform Commission of Canada in 1976, followed by a report of the commission in 1987, a study by a subcommittee of the House of Commons Standing Committee on Justice and the Solicitor General in 1993, and a white paper issued by the Department of Justice in 1993.

In this Parliament there was Bill C-284, tabled in response to the Westray disaster, the Department of Justice's paper, the hearings of the Standing Committee on Justice and Human Rights, the government's response and this bill. Surely, it is time to stop discussing and studying the issue and make the balanced reforms proposed in this bill. I therefore urge honourable senators to give this bill expeditious consideration, given the long period of time that the bill's subject has been before us and its importance.

Hon. Senators: Hear, hear!

Hon. J. Michael Forrestall: Honourable senators, it is with some degree of humility — a great deal indeed — that I speak to this long-overdue bill, Bill C-45, as both a Nova Scotian and as someone who has been active in the labour movement in my province and in other parts of Canada.

At 5:18, May 9, 1992, the foundations of New Glasgow, Westville, Stellarton and Trenton rattled as though there was an earthquake. Sadly, it was something much worse — the old mining towns of Pictou County, in the blink of an eye, lost 26 miners; some who were very young and some who were old. Sons, brothers, husbands, fathers, uncles, cousins and friends lost their lives deep in the earth of Nova Scotia, in a flash explosion that probably could have been avoided.

Most people who were not at the mine that day were awakened, but went back to bed and to sleep. It was only later in the morning that the full horror of what had happened touched everyone in the county, and particularly in those four towns. It was as though our whole province had ground to a halt and went into mourning, both for and with the people of Pictou County.

Remember, honourable senators, Nova Scotia is not a stranger to mining disasters. We have only to look back to Springhill in 1958, where I attended as a young reporter for the old British United Press — Senator Graham will remember that — together with Charles Arnold Patterson of Dosco, whom I had the great pleasure of defeating in federal politics twice.

Something very serious went wrong at Westray on that early May morning. There were great breaches in workplace safety that contributed to the disaster and the loss of 26 souls. We can all lay blame, that is easy, but hindsight is 20/20. What is important today is that we take legislative steps, through Bill C-45 — and I hope it is to be known as the Westray bill — to make it as certain as we can that if this type of tragedy occurs again, there will be recourse for those affected, and guidance for the courts.

There is a man in the gallery today — actually there are three of them up there — Vernon Theriault, who was on the rescue team at Westray, and who is a recipient of the Medal of Bravery.

Hon. Senators: Hear, hear!

Senator Forrestall: The three of them have laboured for a long time, together with many others, to be here this afternoon to sit in this place but, if I may use the words of my colleagues, more to watch us expeditiously deal with this matter. It is my hope that the matter can be dealt with today at all stages so that these people can go home to their families, their surviving colleagues, with news that is good. Most important is that they go home with good news for the families.

• (1640)

I want to do something that I think is important. I want to name them: John Thomas Bates, Larry Arthur Bell, Bennie Joseph Benoit, Wayne Michael Conway, Ferris Todd Dewan, Adonis Joseph Dollimont, Robert Steven Doyle, Remi Joseph Drolet, Roy Edward Feltmate, Charles Robert Fraser, Myles Daniel Gillis, John Philip Halloran, Randolph Brian House, Trevor Martin Jahn, Laurence Elwyn James, Eugene William Johnson, Stephen Paul Lilley, Michael Frederick MacKay, Angus Joseph MacNeil, Glenn David Martin, Harry Alliston McCallum, Eric Earl McIsaac, George James Munroe, Danny James Poplar, Romeo Andrew Short, and Peter Francis Vickers.

Honourable senators, I hope we will pass this bill. No piece of legislation is ever perfect. Bill C-45, however, is long overdue and not only in my opinion. As suggested by Senator Moore and others, the shortfalls of the bill can and should be corrected as time goes by.

The bill, whose genesis was the Westray mine disaster, amends the Criminal Code to establish rules for attributing to organizations — including corporations — criminal liability for the acts of their representatives. It establishes a legal duty for all persons directing work to be done to take reasonable steps to ensure the safety of workers and the public, sets out factors for courts to consider when sentencing an organization, and provides optional conditions of probation that a court may impose on an organization.

Proposed section 217(1) of the bill states:

Every one who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.

This bill has its greatest impact on the liability of corporations and other associations of persons as they relate to criminal offences. The bill uses the term "organizations" which is an all-inclusive term, broadly defined to include all major participants in the economy and all associations of persons, created for a common purpose.

An organization would be responsible for crimes based on negligence where the acts of omission of its representatives, taken as a whole, are negligent and where senior officers showed a marked departure from the standard normally expected in the circumstances. I suppose that is a reasonable test for a corporation.

In regard to other crimes, those not based on negligence, the organization would be criminally liable whenever a senior officer with intent to benefit the organization commits the prohibited act or uses representatives lower down in the organization or outsiders to commit the act, or fails to act on knowledge of criminal activity by its representatives.

The corporation can be fined for these criminal acts and the bill sets out sentencing guidelines, such as: Did the company profit by this criminal act?

Under this bill, a corporation may also be put on probation to ensure that it does not commit similar acts in the future and to encourage the corporation to establish policies to change the corporate structure.

Under Bill C-45, organizations may now be charged with criminal offences if they operate an unsafe workplace. Those in the position to direct the work of others are under a legal duty to take reasonable steps to prevent bodily harm arising from that work.

Senior officers of an organization may be found at fault for reasons other than negligence, such as being party to an offence while acting within the scope of their authority, or by knowing that an organization is about to be party to an offence but doing nothing to prevent it.

This bill already had all-party support in the other place. Peter MacKay, my leader and the Member of Parliament for Pictou—Antigonish—Guysborough,, introduced a motion some years ago calling on the government to bring in just such a bill. There is a weakness in Bill C-45 in that it does not deal with the situation where the culpable organization no longer exists when sentencing pronounced. Additionally, nothing in the bill makes it easier for those who have suffered at the hands of a corporation to receive timely and direct compensation.

Having said that, I reiterate that I am in support of this bill, as are all on this side.

Honourable senators, let us get this bill through today. Let us send home three very distinguished representatives of their community, their unions and, above all, of their friends and neighbours who have suffered these many years.

Hon. John G. Bryden: Honourable senators, I wish to speak in support of this bill. I will not speak for very long. I have been associated with the mining industry and the workers of that industry during my legal career for a long time. The United Steelworkers of America have been clients of mine for a long time. I have been at mine heads when it was not very pleasant because

there were wildcat strikes going on. I was in Wabush, Labrador, when nine steelworkers had been fired. We did all right. I got people back to work. As I also admitted, I also made a significant amount of money off of them in doing that.

The reason I rise, though, and I thought I would do it because of my past association representing a very valued client, I will suggest, with all due respect to Senator Forrestall, that we do send this bill to the Standing Senate Committee on Legal and Constitutional Affairs. The committee is prepared and are ready to deal with this matter tomorrow at their next session.

This bill has a number of significant clauses. We want to be sure that this bill does what it purports to do so that after all this time we do not find that someone left a sentence out or made a mistake that may nullify significant provisions.

I am not interfering with the sponsor of the bill, but it would be my position that we should follow our normal course as expeditiously as possible. I know that our friends will be here until next Friday. Certainly, it looks like we will be here, too.

I believe we should follow our normal procedure. This bill will be a priority. It is not a big bill to deal with, but it needs to be studied. That would be my recommendation.

Senator Forrestall: Might I ask the honourable senator a brief question?

Senator Bryden: Yes.

Senator Forrestall: I take it from the remarks and comments of Senator Bryden that we can deal with this matter expeditiously. However, I am a little shaken up when I hear him say that we will be here until next Friday. We thought we were here until Christmas. I cannot quite figure it all out. Will the honourable senator give us his undertaking to work towards getting the bill out of committee tomorrow?

• (1650)

Senator Bryden: I cannot give that undertaking. I have received, though, information from the leadership of this side that this is a priority bill that will take priority over anything else once it gets to committee, and it will be moved as quickly as possible. We would hope that it could be done in one session. If not, it would be a matter, perhaps, of having a second brief session at another time, but either the same day or this week, or the beginning of next week. My point is that it is just too important to rush at this stage. The honourable senator has the commitment of this side that this is a priority bill at this time.

Senator Moore: Honourable senators, might I ask a question of the Honourable Senator Bryden?

Senator Bryden: Yes.

Senator Moore: I heard the remarks of my colleague Senator Forrestall, and know that long debate has gone on with respect to the subject-matter of this bill. I see our friends in the gallery and know that they have been here for a week now, to see this matter brought to its rightful conclusion by parliamentarians. Since we are the final step in that path, I would like to know whether our friends opposite would be in agreement with having this bill read a third time now. Would you agree with that?

Senator Bryden: I would prefer not. It is standard procedure, which has been required in many instances, that bills in this place be referred to the appropriate committee for that appropriate committee to make the judgment that this bill can now come back here in report for third reading. It is a legal bill, and it is amending the Criminal Code. That means the provisions of this bill will be interpreted by the courts, and the sort of interpretation that is normally given to Criminal Code provisions will be applied to it. I would hate to be part of a chamber that, by rushing this bill through, gives to the party most concerned a right, and then when they go to use that right, they find that they do not really have a remedy. That is my point.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, let me make it perfectly clear that the Official Opposition in the Senate supports the adoption of this bill in the most expeditious of ways possible. This adds to the importance of our Standing Senate Committee on Legal and Constitutional Affairs being free to sit at its appointed time, which is at 10:45 tomorrow morning. It is my expectation, and it will be the position of the opposition, not only now at second reading but also in committee tomorrow morning, that the matter be dealt with in committee expeditiously. I would hope that we would have a report back from the committee expeditiously and that, indeed, the house will be adopting this bill unanimously.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I want to speak of my strong support for this bill. Those of us who were not there with respect to Westray but were certainly there with respect to Springhill know how important this bill is. A few members of the Standing Senate Committee on Legal and Constitutional Affairs are in the chamber, and I know that it has been their normal practice to not do clause-by-clause examination the same day they study a bill. I would hope that in this case they would feel comfortable that, if all of their legal concerns were met, they would then be able to move to clause-by-clause consideration on the same day that they had heard witnesses. I am seeing a nod from Senator Nolin, a distinguished member of the committee, and I see the same from Senator Bryden. I think that would do what Senator Kinsella has indicated: We send it to committee but deal with it as expeditiously as we possibly can.

The Hon. the Speaker: Honourable senators, I think the way for us is clear. It would require leave for us to proceed now to third reading, and our normal procedure is the one we are all familiar with.

Hon. Senators: Question!

The Hon. the Speaker: The question has been put. It was moved by the Honourable Senator Moore, seconded by the Honourable Senator Losier-Cool, that this bill be read the second time? Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator Moore, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

BUSINESS OF THE SENATE

Hon. Marcel Prud'homme: Honourable senators, I just want to be on record that I totally support this motion, but would point out that we have a perfect example of what I was trying to prove all the time. One of the most prominent and knowledgeable members of the Banking committee could not attend an important meeting because his other very important duties required him to be here this afternoon. I am only reflecting for the future. I thank him for being here. I told him that I would support him, including third reading if need be. This proves that we will have to reassess how we function in the future. I am not saying immediately. This is the best example I can find. A prominent member of the Banking committee has had to sit here all afternoon, waiting for his bill to be dealt with.

[Translation]

BILL TO CHANGE THE NAMES OF CERTAIN ELECTORAL DISTRICTS

SECOND READING

Hon. David P. Smith moved second reading of Bill C-53, to change the name of certain electoral districts.

He said: Honourable senators, it is a pleasure to be able to discuss Bill C-53, to change the name of certain electoral districts.

[English]

As honourable senators are aware, the ridings represented by members of the other place have been updated by electoral boundary commissions established under the Electoral Boundaries Readjustment Act. Through the work of the electoral boundary commissions, a new representation order was proclaimed on August 25, 2003. As a result of the discussion of these procedures and debate on Bill C-49, I think members are familiar with how that works.

However, some members of the other place from all parties have expressed concern over the new names that were chosen for their ridings. Based on the suggestions of the members concerned, this bill would change the names of electoral districts affected by the new representation order in order to better reflect the geographical names of these electoral districts.

This bill is not the first of its kind. Parliament has intervened to change the names of electoral districts several times in the past. In fact, 57 electoral district name changes have been carried out by four separate acts since the 1996 representation order.

• (1700)

By way of background, Bill C-53 arose over discussions that occurred on Bill C-49, the Electoral Procedures Acceleration Act. Many members from four parties raised concerns; and I can give the breakdown. This bill proposes adjustments to the names of 38 ridings, 11 of which are held by Bloc members, nine by Liberal members, nine by Progressive Conservative members and nine by Canadian Alliance members. Minister Boudria agreed with representatives of the other parties to bring in a bill as long as all parties unanimously supported it, rather than have up to 38 different private members' bills, which has occurred in the past. This is a much more efficient way to deal with the matter when there is total unanimity.

The bill was introduced on Wednesday, October 22, and on October 23, the next day, a motion was carried unanimously to pass all stages of the bill. This is an example of harmony and solidarity that is truly inspiring. There was no recorded vote. I cannot recall any other recent instances of total unanimity.

I trust honourable senators will respect the unanimous request of members of these four parties in the other place. I am hopeful that the bill will be dealt with expeditiously and in a non-partisan manner.

Hon. Jeremiah S. Grafstein: Honourable senators, would the honourable senator allow one question? Did the sitting members in the other place agree to the changes to the ridings that they currently represent in respect of the riding names?

Senator Smith: Yes, there was unanimity. As a matter of fact, I moved a motion on behalf of the Alliance member for Kelowna, B.C., Werner Schmidt. There are no partisan issues.

Hon. John Lynch-Staunton (Leader of the Opposition): I have a question for Senator Smith. In the history of name changes, were any approved while the proclamation order was still unfolding in respect of the 12 month —waiting period before going into effect?

Senator Smith: I am not 100 per cent certain of that. I will try to obtain that information for the honourable senator. I like to give honest answers.

Senator Lynch-Staunton: Could the honourable senator look into that?

The proclamation order does not come into effect until August 25, 2004. Why are we doing this now? Other changes may be contemplated early next year that could be added as late as June, before we adjourn for the summer, rather than start the process over again.

Senator Smith: That is one way of looking at it. However, I am inspired because I am a member of the Boy Scouts Council for Ontario, and I cannot help but think of their motto: "Be Prepared." There was unanimity in the other place to proceed now, and I would be inspired if the same solidarity would occur in this chamber in a non-partisan way. That was the case over there.

Senator Lynch-Staunton: We can assume that this is your good deed for the day.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, in the spirit of solidarity, I will commence my remarks by quoting from a distinguished former member who was once referred to as a "national treasure." Of course, I speak of the Honourable Allan MacEachen who, in 1964, was quoted by the Royal Commission on Electoral Reform. He stated: "The task of assigning names to the constituencies is for the provincial commissions. It is possible for MPs to make representations to the commissions at hearings, but government members will have to take their chances along with opposition members as to the names of their constituencies."

Honourable senators, I concur with the Honourable Senator Smith that this is not partisan. However, it is somewhat odd that this bill seems to reject the work of the commissions appointed by the government and paid for by the government, meaning the taxpayers of Canada. It is true that bills brought forward by MPs to change the names of their electoral districts have usually sailed through Parliament with little or no opposition. Whilst it is not true that nine members of the Progressive Conservative Party have asked for name changes, it is true that eight did. However, it is an open question as to how much public input or participation there is in the renaming process.

It is not my intention to quarrel with the specific name changes proposed in the bill, but it is my intent to point out for the committee that will examine this bill that they look carefully at the recommendations of the Lortie commission. The commission was quite specific in its views. It is quite clear that if the commission were to examine this bill, it might have some problems with it. Indeed, let me quote recommendation 1.4.11 of the Lortie commission:

We recommend that:

(a) electoral boundaries commissions be encouraged to use other than geographic names to designate constituencies particularly where this would avoid the use of multiple hyphenations;

(b) the legislation specify that the name of a constituency not be changed other than during the boundaries readjustment process.

I will restate that the Lortie commission recommended that the legislation specify that the name of a constituency not be changed other than during the boundaries readjustment process.

(c) the commissions ask the Canadian Permanent Committee on Geographical Names to suggest names for constituencies where changes are required or contemplated, and that the designations of these constituencies and the rationale for the choice be presented in the commission's preliminary reports.

As the Lortie commission noted, name changes generally involve changes in geographic designations. Furthermore, these changes are almost invariably to lengthen the name, often through the use of hyphenated words being strung together. I would suggest that committee members look carefully at the names, where they will see many hyphens. Bill C-53 contains a number of examples of that concern. Other changes involve a reordering of the names, and the committee will want to look at that as well.

Honourable senators, I agree with the principle of the bill, but I think that the committee to which the bill will be referred should take a careful look at it.

Hon. Marcel Prud'homme: Honourable senators, that is the problem. I do not have the research staff that caucus members may have, but I do have something prepared on each major piece of proposed legislation. It is difficult to decide which one to spend time and effort on.

• (1710)

I have always opposed the change, and I am not surprised that my very good friend Senator Smith says that there was a beautiful unanimity. Of course — we are back to square one in the days of Azellus Denis, where they used to change streets among themselves to accommodate each other — we are back to gerrymandering. It is a kind of return to the past, where a member should be the last to be involved. That is why we have commissions; that is the point that was touched brilliantly by the Leader of the Opposition.

They have a vested interest. Let us not be kidding each other. First, Senator Lynch-Staunton was very right when he said that we do not even know if that bill will see the light of day. However, we still change names on a possible map that will be given Royal Assent eventually. That is number one. He is absolutely right.

Second, it is a bad principle to allow members to tamper with decisions that have been given to a series of commissions. The commission listened to everyone and then they rendered a decision. Then the House of Commons was given a few more days to beg the commission again to change for all kinds of reasons; and then the commission finally terminated its work by saying, "Here is our conclusion." — and that should be it. It is unbelievable.

I will not read you my speech; it is too long. I was taken by the eloquence of Senator Joyal on this issue when it went the last time to the Justice committee. If I remember well, he opposed it vigorously, with much better arguments than I can put forward for your reflection.

What he said then still applies today. Imagine, when you have a district that is known as Bonavista—Exploits, changed to Bonavista—Gander—Grand Falls—Windsor — I feel I am in a train station, because everyone wants their village to be included. You have districts such as Matapédia changed to Haute-Gaspésie—La Mitis—Matane—Matapédia — I could go on. You would not believe what you see. At least one is for simplicity. Mr. Shepherd has one that is clear Clarington—Scugog—Uxbridge — I had better go to that region to find out exactly what that is. In any event, he wants to change all that back to the old traditional name, Durham. I am in favour of that because I remember the member who sat for Durham — he was a Conservative.

The principle is wrong, the principle that we should support that once the commission has rendered its decision — and I am surprised. Senator Kinsella usually has much stronger arguments than he did today, probably for brevity or helping the government to pass this bill, I will not say further. I will tell you probably that no one else will speak. The bill will go on through second reading, and again we will make our representations at the committee. We all know politics.

In my pocket, I have notes of six calls that I just got from people saying, "The bill is coming. You know it will be very good for my re-election if you were to let it go." I was elected nine times, and I refused to change the name of my district. It was St. Denis when I got it; it was St. Denis when I left. They changed it after I left because there was a section that wanted to have its name in there. Of course, it was good for a political point; but again, I repeat, that is our job — to reflect and let it go. We are going back to square one of the old days when Mr. Pearson said that it is enough to have gerrymandering.

Maybe I should speak French, but I am afraid that many people may not follow me, because you need to be connected to understand. So that is it. I regret — the principle is wrong — but we all want to be accommodating, so I will finish there. I see you are encouraging me so much, madam. How can I turn down your encouragement to sit down?

The Hon. the Speaker pro tempore: Is the house ready for the question?

Hon. Senators: Question!

The Hon. the Speaker pro tempore: Is it the pleasure of honourable senators to adopt the motion?

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

The Hon. the Speaker pro tempore: Honourable senators, when shall this bill be read the third time?

On motion of Senator Smith, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

NATIONAL ANTHEM ACT

BILL TO AMEND—THIRD READING— DEBATE ADJOURNED

Hon. Vivienne Poy moved third reading of Bill S-3, to amend the National Anthem Act to include all Canadians.—(*Honourable Senator Poy*).

She said: Honourable senators, it is my pleasure to speak at third reading debate on Bill S-3, to amend the National Anthem Act to include all Canadians. Bill S-3 proposes that the English lyrics of the anthem be amended by replacing the words “all thy sons command” with the words “all of us command.” No change to the French lyrics is proposed. The bill is co-sponsored by Senator Tommy Banks, and most of you know that he is a noted musician from Alberta.

I would like to thank the Standing Senate Committee on Social Affairs, Science and Technology for their unanimous support of this bill. I would also like to thank the witnesses who appeared before the committee for the time and effort that they devoted to this issue.

As many of you know, Bill S-3, An Act to amend the National Anthem Act to include all Canadians, has a long history in this chamber. It began as an inquiry in February 2001, which resulted in unprecedented media attention and an outpouring of support for the amendment of the national anthem to include women and girls with words that would be more inclusive. I would like to note that many senators, organizations and individuals also expressed their support to me, personally.

Despite this unprecedented level of support for an initiative, and all the people encouraging me to go forward with legislation, I might not have felt compelled to sponsor a bill in the Senate if it had not been for the following reasons: First, Bill S-3 fulfils the commitment of the federal government in 1980 to consider amendments to the National Anthem Act in recognition of the fact that “sons” was not reflective of Canadian society.

• (1720)

At the time the national anthem was being debated in the other place and in the Senate on June 27, 1980, all three House leaders

agreed to facilitate the adoption of the bill by limiting the debate during second reading to one speaker for each party and not proposing any amendments to the English version of the national anthem.

Through this expedited process, the National Anthem Act passed through the other place and the Senate in one day. Some of my honourable colleagues may remember this event. This sense of urgency around the passage of the National Anthem Act stemmed from the collective unease about the state of the country's unity as a result of the referendum in Quebec in May of the same year. As such, the federal government felt it was necessary to shore up national symbols that would bind the country together. Therefore, the act was passed with little input from Canadians.

Nevertheless, the House leaders in the other place recognized that amendments were necessary in the English text and agreed to have them dealt with by way of private members' bills, which would be referred to a special committee at the following session of Parliament.

I will quote the Honourable Secretary of State and Minister of Communications, Francis Fox, who brought the bill forward. He said:

Many would like to see the words “sons” and “native land” replaced to better reflect the reality of Canada. I believe all members are sympathetic to these concerns. I would, therefore, like to assure honourable members that in the course of the next session the government would be willing to see the subject matter of a private members' bill on this question.

In response, Ed Broadbent, then Leader of the NDP stated:

I want to say that in this context that part of the understanding expressed by the minister in introducing the subject today is that a committee will be struck during the next session to deal with some important changes to the wording.

In particular, Mr. Broadbent referred to an amendment to the word “sons.”

That same day, Senator Florence Bird, best known for chairing the Royal Commission on the Status of Women, declared that she was “nobody's son” and was assured that minor amendments would be considered in the next session of Parliament.

The National Anthem Act only passed under the assumption that a special committee would be struck to consider amendments to make it more reflective of our population. However, I regret to inform honourable senators that this procedure was never put in place.

Here we are today, 23 years later. Now is the time to ensure that the commitment made on June 27, 1980, to make the anthem more reflective of Canadian society is fulfilled.

Second, in 1982, the Canadian Charter of Rights and Freedoms came into effect. As Senator Beaudoin has so ardently argued in this chamber, this amendment would ensure that the national anthem is in keeping with the principle of equality of rights between the sexes as guaranteed in section 28 of the Charter.

Third, I discovered that contrary to most available sources, including Canadian Heritage, the original wording of *O Canada* in 1908, from the National Archives, did not contain the words "true patriot love in all thy sons command." Instead, in 1908, the words of *O Canada* read as "true patriot love thou dost in us command." I note that Canadian Heritage has now corrected the information on its Web site. This amendment returns *O Canada* to its original meaning and intent.

The wording "in all of us command" is merely a modern wording of "thou dost in us command." Linguists and music historians have declared that this wording is linguistically and musically sound.

Fourth, there was a precedent for changing a national song to make it inclusive of women. In Australia, a country similar to Canada, *Advance Australia Fair* was changed to make it more inclusive. The committee that examined the words of their national song in the early 1980s replaced "Australian sons let us rejoice" by "Australians all let us rejoice" before it was proclaimed officially as a national anthem in 1984.

For the above reasons, I introduced legislation to amend the National Anthem Act in February 2002. Unfortunately, that bill died as a result of prorogation. When the present session of Parliament began, I reintroduced it in its present form as Bill S-3 in October 2002.

I wish to thank all senators who have spoken on Bill S-39 and Bill S-3, both for and against this amendment. It is very important to have a debate about the symbols of our country.

Obviously, there have been concerns about this amendment, some of which my honourable colleagues have raised in this chamber. We all have an attachment to our national anthem and strong feelings about it. I hope that I can address some of the concerns that have been expressed today.

The first concern that I heard raised is that it is not possible to amend the anthem because it is our tradition. However, Sir Robert Stanley Weir amended the song *O Canada* a number of times. There were at least 25 different versions of *O Canada* in circulation throughout the 20th century. The committee that met to examine the national anthem in 1967 also altered nine words of the anthem.

Therefore, the tradition of the national anthem, such as it is, dates back to 1980. Indeed, if one wants to stay with tradition,

one should go back to the original 1908 version of *O Canada*, which included the word "us" instead of "sons" and best reflects the intent of the author.

The next concern expressed is that this bill is about political correctness. It is not. Many words commonly used are no longer acceptable in Canadian society. The *Canadian Press Style* guide dictates inclusive language and even *Star Trek* has changed its opening to "where no one has gone before."

Many churches offer alternative versions in their hymnals that are inclusive of women. The United Church declares in its guidelines that inclusive language is important because "language both reflects and shapes our world...the use of inclusive language is thus a justice issue and cannot be dismissed as a passing fashion or a concern of a radical few."

Indeed, if Sir Robert Stanley Weir used inclusive language in the original wording of *O Canada*, why should we deem the proposed amendments as politically correct? The inclusive wording dates back to 1908.

Another concern is that this amendment shows disrespect for men who fought in wars. The national anthem is heard every day in schools and at social events, so going to war is not the only way to show patriotism. This amendment does not take away any recognition from our veterans. It would if it were to read as "all thy daughters command."

An amendment to the word "us" merely includes all the women who were also involved in the war efforts in enumerable ways in the past. Think about all the women who helped on the home front in the factories, the women pilots who delivered the planes to the men in the air force, and those who worked as nurses serving in the front lines.

We all know how important the contributions of women have been during wartime. For example, in World War I, 2,504 nurses served in the overseas military forces of Canada, and 39 of them died in action. Are these sacrifices not worthy of inclusion?

In fact, one of the most passionate advocates of this amendment is from a World War II veteran from Alberta, Stuart Lindop. He has argued that:

• (1730)

As a veteran, a volunteer, wounded in action liberating Holland, I am very well aware of the tremendous contribution made by women to Canada's war effort in the Armed Forces, in industry, and on the home front. The women who are members of our Canadian Armed Forces must find a certain irony when they sing our national anthem, especially the fourth sentence, true patriot love in all thy sons command. Women are implicitly excluded from recognition.

A mother, Lorraine Williams, wrote:

I always sing my own version and replace "in all thy sons command" with "in all of us command." It is really that simple... I have a daughter who is a Major and a pilot in the RCAF, which makes the wording "sons" even more ludicrous.

Finally, there is the concern that this amendment may open the anthem to endless changes. It will not. This legislation does not propose changes to the French version of the national anthem, nor to the word "native" nor to the reference to "God." Aside from the word "sons," these are the two words that have ever been raised with respect to amending the English version of the national anthem.

The word "native" in the dictionary refers to indigenous peoples or descendants of immigrants who were born in a certain country or locality. As an immigrant, Canada is my home and it is the native land of my children and grandchildren because they were born here. In fact, the word "native" includes all Canadians.

As for the reference to "God," this is in keeping with the preamble to the Charter, and the word "God" in the dictionary refers to a superior spiritual being — it is not necessarily Christian in designation. The majority of Canadians, whether we practice a religion or not, believe in some higher spiritual being.

Clearly, the word "sons" is the issue meriting the most concern. Since 1984, all six private members bills that have been introduced in the other place called for amendment to the word that makes it more inclusive of women. All the bills, sponsored by three members of Parliament, were the result of petitions from constituents. This amendment is of the greatest concern to Canadians. Therefore, the intent of this bill is simply to update the anthem so that it is more reflective of our society today, as well as inclusive of more than 50 per cent of our population.

I would like to assure all honourable senators that this is a positive amendment. As the Honourable Mitchell Sharpe, who has a long history in the Government of Canada, wrote:

I write to congratulate you for your decision to introduce legislation that will replace the word "sons" appearing in the national anthem in the phrase "true patriot love in all thy sons command" by a word that has the effect of including both sexes.

Dr. Lorna Marsden, whom some of you may remember from her days in the Senate, now president of York University, wrote:

Congratulations on your Bill introduced to change the wording of the national anthem back to its original non-sexist form — your arguments based on the original 1908 version of the wording are indisputable.

Dr. Robert Birgeneau, President of the University of Toronto, also wrote:

I congratulate you on taking the initiative in this very important matter of equity in one of the most powerful expressions of our Canadian identity — our national anthem.

Mr. Peter Trueman, well-known from his days as a news anchor on Global Television, wrote:

In my view, the words "true patriot love in all thy sons command" should be replaced by the words "true patriot love in all of us command."

Ms. Stephanie MacKendrick, president of Canadian Women in Communications, also wrote:

I think it's a very important, yet simple, request to make the language of the national anthem inclusive.

Women's organizations and women's studies groups also endorse this amendment. The United Church, in keeping with its policy of inclusive language in its hymnals, also passed a motion that supported this amendment.

I would like to stress the importance of this amendment for future generations, for girls and boys who are studying in school today. It represents a real commitment to equality in the words of our most important song. The YWCA of Canada has written to say that they see a need for change in the anthem to reflect the aspirations of girls.

Consider the schoolchildren who sing this anthem. A number of teachers have also taken up the cause. In 1993, Judith Olson, a music teacher in Ontario, launched the *O Canada* Fairness Committee, after having numerous students wonder about the implicit exclusion in the words "in all thy sons command."

Another community leader, Frances Brogan, wrote:

While volunteering as a pathfinder leader a number of years ago, I was struck by the inappropriateness of the words "in all thy sons command." One evening as I sang those words, I realized that I was standing in the midst of a group of young women. From that day, I began to use, "in all of us command."

Now consider the recent women university graduates who now often outnumber their male counterparts. As Ruth Rees, a professor at Queen's University, wrote:

I was at a convocation at Queen's University...where I read for the umpteenth time our national anthem. As we were honouring a woman as our honorary doctorate, I realized just how archaic the anthem is.

I have received numerous letters from fathers and husbands who feel uncomfortable with the wording of the anthem and asked that it be changed. The numerous letters of support from organizations and individuals, and the thousands of signatures on a petition for this amendment mean that I represent many Canadian voices in speaking today.

Honourable senators, we have an anthem that excludes half of our schoolchildren sitting in their classrooms. Its wording contradicts the message that teachers everywhere are delivering: that girls and boys are equal in ability, capacity, and in service to their country. We need to correct this situation for the future of Canada.

Consider the women in our military today who stand proudly ready to fight for Canada, and consider the women who supported the war effort so ably in the past. Think of the women athletes who have gained great acclaim at the Olympics, and think of the immigrant women who thought they had arrived in a country of equal opportunities.

Honourable senators, when *O Canada* is played to proud acclaim, it is meant to inspire. Let us inspire all Canadians.

Hon. Jeremiah S. Grafstein: I wish to commend Senator Poy for her stupendous efforts in changing public opinion and also changing the opinion in intellectual fora. I agree with all her objectives and I must say, coming from a family of three generations of very strong women, that they are urging me at every level to support this bill without any question. Having said that, I am always curious about words, and I just want to raise a very simple question to the honourable senator. I do not want to deter her, and I will support this bill wholeheartedly.

However, when the honourable senator raised some comments about the text being all-inclusive and that we have cleansed the text of its exclusionary implications, I thought about the word "patriot," as in "true patriot's love," when you raised it, so I went to the Oxford dictionary and examined it carefully. I am wondering whether or not your cleansing went far enough and whether you might think about this for your next round.

• (1740)

Turning to the dictionary, the word "patriot" is a noun, a person who is devoted to and ready to support or defend his or her country. The word "patriot," according to the Oxford Dictionary, is neutral when it comes to gender. However, when you go further, when you look at the root of the word "patriot" you come to the word "patriotism," which is based on the French word "patriote," and the Latin *patriota* from the Greek *patriotes* via *patrios* which is defined as "of one's fathers" or "fatherland." The root word of the word "patriot" is father. If you go down the dictionary on the same page, you will see reference to patron saint, which really refers to the masculine and not the feminine.

While the honourable senator was avidly searching the root words to leave no false impression, as our former colleague Senator Marsden says, that we should have a non-sexist anthem, to which I agree wholeheartedly, she might consider the next step of changing the word "patriot" to a word such as "loyal," or even a more robust word.

I leave the honourable senator with the connotation that her work is not completed. Would the honourable senator give us her response?

Senator Poy: The honourable senator mentioned that one of the definitions in the dictionary for the word "patriot" includes both sexes. That is the more modern definition. If you go back, there are many words that would originate with a masculine ancestry.

If you look at religion, many people think of God as masculine. However, if you really go back far enough in all native communities, God was a woman. We should remember that.

Hon. Anne C. Cools: I have been listening to the honourable senator with some care. According to the honourable senator, she has made these proposals with an eye to bringing the anthem into harmony with the Charter of Rights and Freedoms, and modernity.

There is an aspect of modernity in which I am very interested. Recently, I have been doing a fair amount of reading on what we call the law of allegiance. As honourable senators should know, the law of allegiance was very much related to what used to be called the phenomenon of the defence of the realm. As these laws developed over the years, according to individuals status in the community, they had to be prepared to be called upon to defend the realm. If a person of high status were called upon — I am talking of hundreds of years ago — that person had to be ready to supply as many arms and fighters to the Lord. I believe the law at the time also said that every able-bodied young man, 15 years of age and older, had to be ready to be pressed into service or commissioned into action to fight.

I am wondering if, during the research of the honourable senator in respect of equality, in today's community, for example, we were to find ourselves, unfortunately, in a state of war and the state of human resources was such that we had to resort to conscription, en passant historically, women could not be conscripted because, contrary to what the honourable senator has said, women, as a great privilege, were viewed as being exempt from those burdens of responsibility. Could the senator tell us if according to the Charter, legally, would we be compelled to conscript women?

Senator Poy: I believe in equality. Therefore, what is good enough for men would be good enough for women. Equality means equality. It also means responsibility. I believe that if we should have conscription in this country, both men and women should be conscripted.

Senator Cools: My understanding is that all that law of the Charter has not touched any of those old laws. The thing about this sort of law is that it remains archaic and unknown until there is a moment of crisis. Our party, our side and Mackenzie King had such a terrible time on the subject of conscription. I am understanding Senator Poy to say that women should be subjected to conscription, if conscription is necessary. My question is whether the women of this country know that, though.

Senator Poy: Actually, I believe that women do know that today. Women are doing exactly what men do in really every aspect of life. Women work and fight alongside men. There will always be a difference between men and women. Women give birth to children and men do not. There would be times when men would do certain things and women would do other things, but when it comes to responsibility, we are equally responsible.

Senator Cools: I accept that. I am not disputing some of that. I was making a distinction between voluntary service in the Armed Forces and conscripted service or compelled service; that is all. I believe that conscription is a different sort of thing from voluntary service in the Armed Forces.

On motion of Senator Cools, debate adjourned.

[Translation]

ROYAL CANADIAN MOUNTED POLICE ACT

BILL TO AMEND—SECOND READING— DEBATE SUSPENDED

Senator Pierre Claude Nolin moved second reading of Bill S-24, to amend the Royal Canadian Mounted Police Act (modernization of employment and labour relations).

He said: Honourable senators, I am pleased and honoured to speak today at second reading stage of Bill S-24, which further modernizes the Royal Canadian Mounted Police Act with respect to labour relations.

The RCMP was created in 1873. For 130 years, its traditions, the professionalism of its members, and its excellent international reputation have been a major source of national pride for Canadians and a symbol of Canada.

Since the early 1970s, however, several RCMP members have harshly and strongly criticized provisions in their labour relations system.

• (1750)

For instance, they rightly criticize their high cost to Canadian taxpayers and their lack of transparency, independence, equity, and impartiality.

Through the research and consultations that preceded the introduction of Bill S-24, I realized that this sorry state of affairs underlies the way the employer treats its employees, and the low

morale and low personal and professional self-esteem of the employees. It is also responsible for the frustration and cynicism RCMP members feel with respect to the current procedure for determining working conditions, on the one hand, and the outdated and highly controversial mechanisms for settling grievances and dealing with disciplinary action, on the other.

Honourable senators, the members of the RCMP deserve that we should look into these serious problems that might, incidentally, work against one of the primary objectives of our national police force, which is to protect Canadians.

I believe most strongly that the safety of our fellow citizens depends on the quality of labour relations within the RCMP.

The main purpose of Bill S-24 is quite simply to improve labour relations so that the RCMP can carry out its mandate effectively.

Honourable senators, I am proud to say that this bill constitutes the first major reform of employer-employee relations in the RCMP since Bill C-65 was passed in 1986.

The purpose of that bill was to implement a series of recommendations set out in 1976 in the report of the important Commission of Inquiry Relating to Public Complaints, Internal Discipline and Grievance Procedures within the Royal Canadian Mounted Police, better known as the Marin report.

Honourable senators, my speech will be in two parts. The first will address the fact that this is the first time in history that there has been recognition of the right of members of the RCMP to speak out democratically and freely on the possibility of unionizing.

The second will analyze the provisions in the bill to modernize the procedures set out in the Royal Canadian Mounted Police Act relating to grievances and discipline, in order to make these more effective, fairer, more impartial and, above all, more independent.

Before going further, I would like to provide a brief explanation of what constitutes a "member of the RCMP" in order to clearly set out the limitations of application of the provisions of this bill.

At the present time, there are two types of members of the RCMP, regular and civilian members. The first group comprises RCMP constables, sergeants and senior ranks. The second refers to forensic laboratory technicians or wiretapping specialists. All are subject to the labour relations framework set out in the RCMP Act.

According to the official figures, setting aside the senior ranks, the provisions of Bill S-24 will apply to approximately 15,000 members of the RCMP.

Federal public servants who work primarily within administrative units of the RCMP would be excluded from the provisions of Bill S-24 because their working conditions and their internal grievance or disciplinary procedures are already governed by the Public Service Staff Relations Act.

Because of the historic nature of the reform I am proposing today, Bill S-24 includes a preamble, which sets out the principles on which implementation and interpretation of the provisions of this bill are founded.

Thus, it first recognizes that the right to certification and the right to collective bargaining are basic principles on which the workplace is organized, in the private and public sectors in Canada.

Next, it points out that the members of the RCMP, unlike members of most civilian police forces in Canada, do not have these rights, and that this situation is a source of injustice and continuing frustration and may even threaten the safety and security of Canadians.

Third, it states that the establishment of good staff relations within the Royal Canadian Mounted Police will enhance protection of the public, since the peace officers will spend more of their time carrying out their duties to the public, as they will be aware that the representatives of an accredited police association will be defending their interests with respect to working conditions and internal grievance and disciplinary procedures.

Finally, the preamble states that the RCMP, in order to enjoy the trust and respect of the public, must be accountable to Canadians, not only through the Royal Canadian Mounted Police Public Complaints Commission, but also through an internal discipline and grievance procedure that is consistent with the principles governing due process of law.

Debate suspended.

FOREIGN AFFAIRS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I regret having to interrupt the Honourable Senator Nolin. I was not signalling to draw the attention of the Senate to the clock. I am prepared to grant him the time he needs to finish his speech.

Senator Stollery, the chair of the Standing Committee on Foreign Affairs, seeks leave for his committee to meet during the sitting of the Senate.

The Hon. the Speaker pro tempore: Honourable senators, is leave granted? The Honourable Senator Robichaud is seeking leave for the Standing Committee on Foreign Affairs to meet.

Hon. Marcel Prud'homme: Honourable senators, please do not be impatient with me, for that makes things worse. I just had enough time to leave the Senate to see a few ill members of my family who came to visit me. They have priority over the Senate. However, I want to do my job. Leave is being sought so that another committee may meet: very few senators will remain.

If the Senate grants leave to continue debate, might the Leader of the Government inform us of what work remains to be done, so we know what we are doing. This makes no sense whatsoever. It is easy for those senators who are absent. Senator Robichaud will note that I have more support than he realizes, even among those senators who are currently in the chamber. Some are beginning to be royally fed up, but do not dare say so. We are being treated like children! I thought this was the Senate of Canada.

Senator Robichaud is in a difficult position, as we know. We are not children. We feel and see it. Everyone is pushing him around. I want to talk about my national anthem and other things. We are not children! But some take the Senate seriously! Look, it is not hard: the most faithful senators are here. But where are the others? I am not here in the Senate to act as the police or the whip. Senator Robichaud does not know that I am speaking on behalf of more senators than he realizes. What are his intentions for this evening, so we can lead intelligent and functional lives?

The Hon. the Speaker pro tempore: Honourable senators, I am sorry to interrupt but it is six o'clock. Is there consent not to see the clock?

Hon. Senators: Agreed.

Senator Prud'homme: Honourable senators, I said pretty well what I had to say. I gave consent. I imagine you are seeking leave for Senator Nolin to continue. You have my consent. I would like to know what Senator Robichaud has planned for this evening. This makes no sense whatsoever.

• (1800)

Senator Robichaud: The Honourable Senator Prud'homme often makes remarks like that. I do not believe we are children. Some senators and some committees want to meet. Senator Stollery has delayed the meeting of his committee. This committee was scheduled to meet earlier today. I am only asking for leave to authorize this committee to meet. Other committees met, then their members came back. I am trying to accommodate as many honourable senators as possible while we carry on in this place.

What is left? Speeches are longer, more time is given to the honourable senators to complete their speeches, and then they take questions. Under these circumstances, it is very difficult for me to assess the time required.

With leave of the honourable senators, I will call the next two items on the Orders of the Day and then seek leave to have the other items stand until the next sitting of the Senate.

One item is in your name, Senator Prud'homme. You intend to speak tomorrow. The other item stands in the name of Senator St. Germain. He is not here, and Senator Tkachuk told me he wanted to speak. It would seem that we will not be addressing Item No. 2 either.

I am sorry I rudely interrupted Senator Nolin. I am prepared to give him time to continue his speech.

Senator Prud'homme: If only you had spoken to us the way you just did.

[English]

The Honourable Senator Grafstein will not disagree with what I have to say.

[Translation]

That is how we wish to be treated. You explained what the problem was. Noticing that it was six o'clock, Senator Nolin sat down, and you did your duty. You called us to order, saying that it was six o'clock and asked whether we would give Senator Nolin leave to continue.

The problem is not knowing. There are kindergartens in my riding that are run better. You get all the blame, and you are the one stones are being thrown at. I can understand your situation! I know we have to interrupt proceedings, and then resume them. In this instance, you spoke to us in a way that we appreciate.

[English]

The Honourable Senator Stollery will be able to attend his meeting of the Foreign Affairs Committee.

Hon. Jeremiah S. Grafstein: Honourable senators, I have a short question for the Deputy Leader of the Government. I noticed that he mentioned not only something that I am interested in but also an undertaking from Senator Prud'homme to speak tomorrow. I have received a number of representations from members on the other side to proceed with No. 2 of the Commons public bills. Perhaps I might ask when the Honourable Senator St. Germain intends to speak to this order, so that we may address that important subject as well?

Senator Prud'homme: That is a good question.

Hon Peter A. Stollery: Honourable senators, I understand that the Standing Senate Committee on Foreign Affairs will have leave to sit, and I apologize to Senator Nolin for interrupting him.

[Senator Robichaud]

The Hon. the Speaker *pro tempore*: Honourable senators, is leave granted?

Hon. Senators: Agreed.

[Translation]

ROYAL CANADIAN MOUNTED POLICE ACT

BILL TO AMEND—SECOND READING— DEBATE ADJOURNED

On the Order:

Resuming debate on the motion of the Honourable Senator Nolin, seconded by the Honourable Senator Prud'homme, P.C., for the second reading of Bill S-24, An Act to amend the Royal Canadian Mounted Police Act (modernization of employment and labour relations).—(Honourable Senator Nolin).

Hon. Pierre Claude Nolin: Honourable senators, I will resume reading from the paragraph where I left off. I was listing the important elements of the preamble.

The preamble stipulates that the RCMP, to enjoy the trust and respect of the public, must be accountable to Canadians not only through the Royal Canadian Mounted Police Public Complaints Commission, but also through an internal discipline and grievance procedure that is consistent with the principles governing due process of law, notably fairness, impartiality, independence and expeditiousness.

That said, let us now move on to the first part of the bill. Since 1873, the federal government has always denied members of the RCMP the right to certification and collective negotiation.

In order to better understand the reasons behind the Governor in Council's decision and reasons, which I will discuss later to refute the government's arguments in favour of such a policy, I will briefly describe the evolution and the history of the RCMP.

Originally known as the North-West Mounted Police, the RCMP was formed to patrol and maintain order in the Northwest Territories, which the Government of Canada had acquired in 1870, therefore recently at that time, from the Hudson's Bay Company.

Its mandate has evolved over the years to respond to the new problems of public and national security and the evolving needs of the federal government and certain provinces.

After the Metis rebellion in 1885 and the completion of the Canadian Pacific Railway, the RCMP took energetic and highly controversial action in a series of violent labour conflicts in Western Canada early in the 20th century, particularly the Winnipeg General Strike of 1919 — a conflict that led to the disbanding of that city's municipal police force. These disturbing events convinced the federal government to create a permanent national police force.

And so the Royal Canadian Mounted Police was born in 1920 from the merger of the Northwest Mounted Police and the Dominion Police.

Beginning in the late 1920s, this new police force signed a series of agreements with the Provinces of Saskatchewan, Alberta, Manitoba, New Brunswick, Nova Scotia and Prince Edward Island to act as the provincial police force in each.

At the same time that it was developing its law enforcement and peacekeeping activities on both the federal and provincial levels, the RCMP was also taking on a larger role in protecting Canada's national security, beginning during World War II, but it partially withdrew from this sector of activity in the early 1980s, when CSIS was created.

Essentially a paramilitary force when it began, today the RCMP has become a national civilian police force offering virtually the same services as other police forces in Canada.

Most of its activities are directed to its contracted police services, or Contract Policing, in eight of Canada's provinces — Quebec and Ontario are the exceptions — more than 200 municipalities, 65 Native communities and three airports. At present, over 60 per cent of the members of the RCMP are assigned to keeping order in these locations.

Members of the RCMP have been denied the rights enjoyed by most private sector workers, public servants, and peace officers in other civilian police forces in Canada, the United Kingdom, New Zealand and Australia for a long time.

Specifically, this exclusion dates from a 1918 federal order-in-council which forbade participation by members of the force in trade union activity, on penalty of summary dismissal.

In order to justify this policy, the federal government of the day stressed, as its modern counterpart still does today, the need to protect the public by maintaining a stable national police force, the specific tasks of the members of the RCMP, the need to subject them to a paramilitary type code of discipline, and the existence of possible conflicting loyalties, with some members of the RCMP showing more loyalty to their police association than to those in command, should there be a labour dispute.

• (1810)

In 1967, federal public servants gained the right to accreditation and collective bargaining, with the enactment of the Public Service Staff Relations Act by the federal government.

In accordance with the order-in-council of 1918, this legislative text contains a provision expressly excluding members of the RCMP from application of this staff relations system. In 1974, in order to counter the efforts of certain members of the RCMP to

obtain the same rights as other federal public servants, the federal government abrogated that order-in-council and that same year established the Division Staff Relations Representative Program.

The organizational structure of this program would appear at first to be similar to that of an association accredited under the Public Service Staff Relations Act. It is composed of members of the RCMP who have been selected as DSRRs in order to represent their colleagues before the employer, on the one hand, and to advise the hierarchy on staff relations, on the other.

However, greater analysis of the way the program operates shows that it is quite different from the system for the federal public service. First, the staff relations representatives cannot be compared to union representatives, since they are part of the RCMP hierarchy.

Furthermore, the program is entirely funded by the employer. According to documents obtained under the Access to Information Act, this initiative is costing taxpayers at least \$3.2 million dollars annually. Finally, there is no independent mechanism to resolve disputes between staff relations representatives and the employer.

Consequently, the administrative authorities and the RCMP high command have, to their employees' detriment, great latitude not only in establishing working conditions, but also dispute resolution mechanisms or disciplinary actions. In order to rectify these serious issues, some members of the RCMP decided to contest in court the prohibition preventing the creation of employee associations.

As a result, in 1985, ten years after the Staff Relations Representative Program was established, members of RCMP's C Division — the detachment comprising the Province of Quebec — created the RCMP Association, prompted by action taken by Staff Sergeant Gaétan Delisle.

However, after the association failed in 1987 to receive union accreditation under the provisions of the Canada Labour Code, Mr. Delisle began a long legal battle to strike down exclusion of RCMP personnel from the provisions of the Public Service Staff Relations Act.

In support of his case, Mr Delisle stated that this violated paragraph 2(d) of the Canadian Charter of Rights and Freedoms, which guarantees all Canadians the freedom of association.

Mr. Delisle and the members of his association have never demanded the right to strike, since they are aware of the importance of their profession, the need to protect the public and the practices of other Canadian police forces.

I have always been surprised that, despite the considerable difficulties they faced during the 1970s, members of the RCMP have always used peaceful and legitimate means to promote their cause.

In comparison, police in Britain and Wales, in the United Kingdom, obtained the right to accreditation and collective bargaining in 1919, some 84 years ago, following an illegal strike and pressure using civil disobedience.

In September 1999, in *Delisle v. Canada (Deputy Attorney General)*, a majority of judges of the Supreme Court of Canada categorically dismissed the argument that the right to organize protected under the charter specifically guarantees the right of members of the RCMP to form a certified employee organization under the Public Service Staff Relations Act and, thus, gives them access to collective bargaining.

In the opinion of the majority, this kind of recognition would unduly limit the ability of Parliament or a provincial legislature to regulate staff relations in the public service. In addition, it would be contrary to the jurisprudence in this respect since the 1987 Reference re Public Service Employee Relations Act.

Given that Quebec members of the RCMP were able to freely form an independent employee organization, the majority found that their right to organize had not been interfered with, and that it was up to the Parliament of Canada, and Parliament alone, to recognize the right, as demanded by Mr. Delisle, through legislative amendments. The court clearly stated that it was not up to it but to Parliament to legislate in that respect.

It is important to point out that two judges had a dissenting opinion in this case, and I would like to share with you the arguments of the minority judges. In a detailed, documented decision, Justices Cory and Iacobucci found that the provisions challenged by Mr. Delisle to be unconstitutional since they did interfere with his right to freedom of association.

In their opinion, s. 2(d) of the charter guarantees the right of members of the RCMP to form a union. Moreover, this protection is also provided by a series of international conventions to which Canada is a signatory, including the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organize.

In the opinion of the minority, the government could not use section 1 of the Charter to restrict the right of members of the RCMP to organize.

To begin with, there was no rational link between the objective of maintaining a stable national police force to protect the public, and the prohibition in the Public Service Staff Relations Act. Moreover, the minority was of the opinion that the minimal impairment test had not been met because the exclusion of 15,000 members of the RCMP from the staff relations system under the Act did not strike a balance between the employees and the employer, quite the opposite.

Finally, according to the minority, the federal government could have elected to limit the right to strike and negotiate a collective agreement in good faith rather than prohibit a union from being formed. Such an alternative would have been more acceptable within the meaning of section 1 and less restrictive and, consequently, would not have constituted a violation of subsection 2(d) of the charter. The exclusion under the Public Service Staff Relations Act could not have been upheld under the section 1 of the charter.

Therefore, the minority proposed a stay of action for one year so that the Parliament of Canada could correct the situation. Of course, since this was the opinion of a minority, it never had force of law. It is rather surprising, but in December 2001, a little more than two years later, a majority of judges in the Supreme Court of Canada, in *Dunmore v. Ontario (Attorney General)*, contradicted their own majority opinion in the *Delisle* case.

• (1820)

They ruled that recognizing freedom of association for the agriculture workers of Ontario called expressly for the creation of a union!

Honourable senators, the majority opinion of the Supreme Court in the *Delisle* case is such that modifying the staff relations regime for members of the RCMP became the prerogative of Parliament and let to the introduction of Bill S-24. Nonetheless, other factors, in addition to those that I mentioned at the beginning of my speech, also prompted me to move ahead on this issue.

While the legal proceedings in the *Delisle* case were underway, two other associations of members of the RCMP were created in Canada, one in Ontario in 1990, and the other in British Columbia in 1992, illustrating the flaws in the Staff Relations Representative Program and the desire to change the staff relations regime within the RCMP.

On September 22, 1989, former RCMP Commissioner Norman Inkster made a surprising statement in connection with the *Delisle* case before the Quebec Superior Court. According to him, the federal Parliament was ultimately responsible for the staff relations framework to be applied to the RCMP. If the law were amended as Mr. Delisle wanted it to be, this would not affect the administration of the RCMP inordinately.

In 1995, the important task force report on revision of the Canada Labour Code, Part I — better known as the Sims Report, "Seeking a Balance" — recommended unionisation for the RCMP, under some other legislation than the Canada Labour Code. The task force felt that adoption of such a policy would not have any negative impact on operational control of the RCMP or protection of the public interest.

Honourable senators, taking all these factors into consideration, Bill S-24 gives the right to accreditation and negotiation by creating, within the RCMP Act, a system that is distinct from the one set out in the Public Service Staff Relations Act. In order to foster the implementation of harmonious staff relations within the RCMP and to ensure credibility, transparency, independence and smooth operation for this initiative, it will be administered by the PSSRB, the Public Service Staff Relations Board, referred to subsequently as the board.

This bill sets out a complete and transparent procedure that will, as I have said, make it possible for members of the RCMP to speak out democratically and freely, without hindrance, on the creation of a police association. The bill does not impose its formation. If the majority of members are in favour, the association will act as the bargaining agent accredited by the commission to negotiate with the employer on improved working conditions for members of the RCMP. The association will also be involved in defending employees during grievance procedures or when disciplinary action is taken.

Given the particular way the work is organized within the RCMP, the duties performed by its employees, along with practices observed in other jurisdictions, in Canada, the United Kingdom and Australia, this association will be comprised only of members of the RCMP and will also not be able to be affiliated with the larger unions to which most federal public servants belong. Protection against intimidation or any other dubious tactics by the employer for the purpose of preventing members of the RCMP from joining an association are also included in the bill.

Once the accreditation process has been duly completed, Bill S-24 establishes a procedure similar to that which currently exists in the federal public service, to begin bargaining in good faith to establish the initial collective agreement for members of the RCMP and the terms for its renewal. The bill also provides for conciliation or binding arbitration in the case of an impasse in the bargaining. Application of these two distinct processes will be under the supervision of the board. The board may appoint a conciliator to assist the two parties in reaching an agreement, or, under certain circumstances, appoint an independent arbitrator in order to settle disputes. Decisions made in the arbitration process are binding and not open to review.

Honourable senators, the collective bargaining procedure proposed in Bill S-24 has two objectives: not only to encourage the positive settlement of labour disputes within the RCMP but also to ensure better protection of the public. In fact, implementing a binding arbitration procedure means that — as is the practice in most other civilian police forces in Canada, the United Kingdom, Australia and New Zealand — if bargaining with their employer breaks down, the members of the RCMP will

not have the right to strike. This ban includes working to rule or any other collective action taken by employees with the intent of reducing productivity.

In this respect the bill is very clear and provides for severe criminal sanctions in the case of an illegal strike. If members of the RCMP commit acts of vandalism or mischief or disturb the peace during collective bargaining, they will be subject to disciplinary action under the Royal Canadian Mounted Police Act or to criminal charges.

Honourable senators, previously I cited a series of arguments that have been used to support the government's continuing refusal to propose a reform similar to Bill S-24. In 2003, such a refusal and the government arguments behind it are no longer justified, have no reason to exist, and in fact, are detrimental to public safety.

In my opinion, the professionalism and restraint demonstrated by certain members of the RCMP on this difficult issue, the minority opinion in the Delisle case, the statements I have already quoted by former Commissioner Inkster, the recommendations of the Sims commission, the evolution of the RCMP, and the strike ban provided in the bill, all demonstrate beyond all doubt that the creation of an accredited police association would have no negative impact on protection of the public, administration of the RCMP or discipline in the force.

What is more, the federal government is trailing not only the provinces and the municipalities, but also other Commonwealth countries when it comes to current practices. Other than England and Wales, New Zealand recognized the right to accreditation and collective bargaining of its police in 1935. Australia did the same in 1942.

Regarding the presumed conflict in loyalty and the chaos that would result from the creation of an accredited police association within the RCMP, this argument is unfounded since the practice of other jurisdictions proves that this has never really materialized. As a responsible parliamentarian who cares about public safety, I am more concerned by the fact that police officers must currently fight for their basic rights to be recognized during a disciplinary hearing or a grievance, too often to the detriment of public safety.

Some 60 per cent of RCMP officers are assigned to contract policing, which provides basically the same services as civilian, municipal and provincial police forces, which they have the right to accreditation and collective bargaining.

That said, I want to talk now about the second half of the bill dealing with the grievance and discipline procedures under the Royal Canadian Mounted Police Act.

Honourable senators, I want to give a brief history of how things work currently, to allow comparison with what I am proposing in this bill.

• (1830)

Honourable senators, the debate on the unionization of RCMP officers has frequently been linked with ineffectiveness, a lack of impartiality, speed and transparency, and above all, independence with regard to the very complex process with respect to grievances and disciplinary action.

Currently, the internal system is swamped by over 1,100 grievances from civilian members concerned about the unilateral decision by the RCMP high command to amend their employee category.

According to a series of reports published in recent years by the RCMP External Review Committee, the time it takes to resolve grievances or impose sanctions all too often exceeds the statutory time limit and can even take several years.

The committee also reports that, besides the significant costs to the RCMP, this worrisome situation is a source of considerable tension for members, their families and colleagues, especially in the case of disciplinary action resulting in suspension without pay or even in dismissal.

I want to stress that this can also affect the confidence of Canadians in an effective and professional national civilian police force. At present, members of the RCMP may file grievances concerning the working conditions enforced by the employer. The legislation states that the RCMP Commissioner is the final level of appeal for decisions made by a lower level with respect to grievances.

Before making a decision, the commissioner must refer certain categories of grievances to the RCMP External Review Committee. While they are appointed by the Governor in Council, the members of this committee are only authorized to review cases referred by the commissioner.

Moreover, the review committee only has the authority to recommend to the commissioner, and thus, has no means of making its advice binding.

To correct this situation, the bill eliminates the External Review Committee and replaces it with an independent, external adjudication process similar to the one in the federal public service.

In this system, a grievance that has gone through the entire internal grievance process may be referred to a board of adjudication, where the employer and the police association are represented and costs are shared on an equal basis by both parties.

The operation of this new process will be overseen by the Public Service Staff Relations Board, and the decisions made as part of this process will be binding.

With respect to severe disciplinary action for offences under the code of conduct, the Royal Canadian Mounted Police Act provides that, following the presentation of a complaint by the employer, a board of arbitration composed of three RCMP officers shall be established. This board shall determine the appropriate penalty to prevent any repeat offence. The member may appeal the board's decision to the commissioner.

As in the case of a grievance, the review committee may make recommendations to the commissioner before the latter makes a decision. In a case of discharge or demotion, the decision is made by a discharge and demotion board, also consisting of three RCMP officers. As in the case of serious disciplinary action, the member may appeal to the commissioner.

Honourable senators, these quasi-judicial decisions can have extremely negative effects on the quality of life and the work of members of the RCMP who must face this complex process, noted for its lack of independence, alone and with few resources.

Without interfering with disciplinary or discharge procedures, and while protecting public safety, Bill S-24 abolishes the arbitration committee and the discharge and demotion board on the one hand, and the process of appealing to the Commissioner of the RCMP on the other. Henceforth, the sanctions will be determined by the employer and will follow an internal review process.

Nonetheless, for reasons of effectiveness, impartiality and especially independence, this decision could be subject to the new independent and external arbitration procedure for grievances.

Finally, in the interests of transparency for the members of the RCMP and Canadians, Bill S-24 states that the Public Service Staff Relations Board would be required to present an annual report to Parliament on the administration of various provisions in the bill, as it currently does for the administration of the Public Service Staff Relations Act.

Before I finish, I would like to give a heartfelt thanks to my staff. They have worked hard on this bill for the past 15 months. I would also like to thank — because we do not do this often enough — the employees of the Senate, who helped me in this work. Among others, I am referring to Michel Patrice and the staff at the Office of the Law Clerk and Parliamentary Counsel, and James R. K. Dugan, a lawyer from Montreal, for the countless hours they spent writing and revising this bill. I would also like to thank Philip Rosen, David Goetz and Robin Mackay from the Parliamentary Research Branch and the Library of Parliament for the excellent study they prepared with respect to the various challenges associated with unionizing the RCMP.

I would also like to acknowledge the significant contribution of Staff Sergeant Gaëtan Delisle, and Sergeant André Girard, who enlightened me on the harsh realities that members of the RCMP are faced with daily with respect to staff relations. Without their unfailing support and invaluable contribution, this legislative initiative would not have been possible.

Honourable senators, in conclusion, Parliament must act quickly in this case. We have demonstrated non-partisan politics and expeditiousness in our parliamentary work when it comes to improving legislative tools available to members of the RCMP, so that they can fight crime in our communities, organized crime or terrorism effectively.

In that sense, I strongly believe that this same spirit must prevail as we proceed through Bill S-24. This legislative initiative will foster harmonious staff relations built on trust, dialogue and mutual respect. This is as important as increasing the RCMP's budget or changing the Criminal Code to allow this police force to carry out its mandate effectively.

The bottom line is that Bill S-24 will be not only to the advantage of the RCMP, it will also be of particular advantage to Canadians, who deserve a top-notch federal police service.

I want to remind you of one fact: you will rarely hear RCMP personnel discuss their problems in public. That is why I found it so useful to have contact with police officers who put me in touch with others, anonymously of course, because their code of conduct prevents them from talking outside the family about family secrets. Their assistance is what has enabled us to draft this bill, a most imposing one, I will admit, but one that was extremely necessary.

• (1840)

[English]

Hon. John G. Bryden: Honourable senators, I will move the adjournment of the debate. However, before doing that I would like to make some quick comments.

Senator Nolin indicated that we are people who act expeditiously. This is a bill that we can undertake expeditiously. However, in my opinion, we need to be very cautious and careful. I had an opportunity to review the bill quickly. It is primarily lifted from the Public Service Staff Relations Act, and amended to try to fit a police force.

There are very considerable concerns. It is absolutely the case that the right to organize grants the power to strike. It does not grant the right to strike, but it grants the power to strike. We need to keep in mind the sort of things that happened in situations where public service unions, including firefighters and police forces, have no right to strike. However, they do have that right if they are pushed — the word used on the union side, on which I often was — or if their demands are not met, particularly in large municipalities.

In 2003, we now are in a position to be able to improve the working conditions of our national police force. That is true. There are many things that we can do to correct some of the things that have been identified, if indeed they need to be corrected, without going to full unionization.

In 2003, and post-September 11, we need to be cautious that we are not strengthening but weakening our policing powers. We do

not need a situation of co-management in our national police force, which occurs now in many of our larger cities in Canada, including Toronto, Calgary, Saskatoon — all kinds of places.

It is nice to think, at least at this stage, that our national police officers, when directed to take action, do so and then check with their superior. They do not check with their union steward.

We need to be extremely cautious in this process. I will not say much more. I will have an opportunity to reply later.

This is not a slam dunk. There is a reason. If we have a situation which the local police force in a city or a province will not handle without a quasi-military discipline and the approach of a national police force, such as the Royal Canadian Mounted Police, then our recourse is the army. The argument that applies to our national police force is almost, if not totally, directly applicable to the army.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, before Senator Bryden moves the adjournment of the debate, I would like to make a few comments and ask a question.

[Translation]

I would like to begin with my congratulations to Senator Nolin for this incredibly well researched presentation.

The Hon. the Speaker pro tempore: Honourable senators, I regret to inform Senator Nolin that his allotted time is up.

Senator Nolin: I am asking for two more minutes.

The Hon. the Speaker pro tempore: Honourable senators, does he have leave?

Hon. Senators: Yes.

Senator Kinsella: Honourable senators, Senator Nolin has said that the Universal Declaration of Human Rights includes the right of association. He also referred to international pacts. There is also a whole series of International Labour Office conventions that are more specific. I wonder if you are aware of these conventions.

Senator Nolin: Definitely, dear colleague; listing all the internationally recognized rights of workers would have been too tedious. I must also say that my assistants and myself are keenly aware of the particularities of the function members of the RCMP perform, especially the fact that theirs is the national police force. I share some of the concerns expressed by Senator Bryden; it goes without saying that a national force cannot be treated like a municipal force, bearing in mind that, if the municipal force does not do a good job, as it happened in Winnipeg in 1919, there will always be a senior police force to take over law enforcement.

That having been said, noting these particularities is not enough; we must also recognize the rights of these workers. It is up to us, in Parliament, to do so, and that is what I have sought to do through Bill S-24, by combining and striking a balance between the rights and responsibilities for workers performing specialized functions and the rights recognized for all workers, via a staff relations regime which recognizes the right to certification and collective bargaining as a fundamental value which, incidentally, is set out in the preamble of the Canada Labour Code.

On motion of Senator Bryden, debate adjourned.

[English]

CLERK OF THE SENATE

2003 ANNUAL ACCOUNTS REFERRED TO INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION COMMITTEE

Leave having been given to proceed to Order No. 165:

Hon. Lise Bacon, pursuant to notice of October 28, 2003, moved:

That the Clerk's Accounts, tabled on October 27, 2003, be referred to the Standing Committee on Internal Economy, Budgets and Administration.

Motion agreed to.

[Translation]

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I believe that there is agreement to have all items on the Order Paper that have not been reached stand in their place until the next sitting of the Senate.

The Hon. the Speaker *pro tempore*: Is it your pleasure, honourable senators, to have all items on the Order Paper that have not been reached stand in their place?

Hon. Senators: Agreed.

The Senate adjourned until Thursday, October 30, 2003, at 1:30 p.m.

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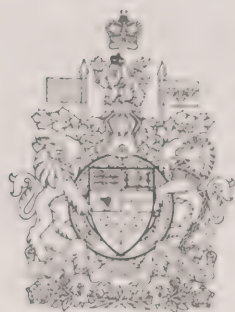
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OFFICIAL REPORT
(HANSARD)

Thursday, October 30, 2003

—◆—

THE HONOURABLE DAN HAYS
SPEAKER

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THE SENATE

Thursday, October 30, 2003

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

SENATORS' STATEMENTS

UNITED NATIONS

SECURITY COUNCIL RESOLUTION 1325 ON WOMEN, PEACE AND SECURITY

Hon. Mobina S. B. Jaffer: Honourable senators, when I was a little girl, I clearly remember my mother reading poems to me about young men travelling to the battlefields to fight in the war. I remember listening to how they would travel through the trenches and how their bodies lay dead in the muddy fields. Now, when I read poems to my children about war, there is a stark difference. War has come into our communities and into our homes, literally and figuratively. For those lucky enough, war has come to their homes only by television. Others are not so fortunate. The Rwandan genocide, the war in Sierra Leone — these are no longer wars fought on a battlefield; rather, they have come to our streets and backyards, directly affecting our men, women, boys and girls.

It is for this reason that Security Council Resolution 1325 holds such great importance. It is a landmark document that clearly recognizes the distinct impact of war and conflict on our men, women and children. In acknowledging how war affects men, women and children in different ways, Resolution 1325 calls for women's full and equal participation in the peace processes and, of course, specific protection for the rights of women and girls. Resolution 1325 is the first of its kind to deal exclusively with issues of women's peace and security, and results from many years of intense work. As Kofi Annan stated, "Just as your work can promote gender equality, so can gender equality make your work more likely to succeed."

In Canada, both government and civil society have a clear desire to see Resolution 1325 implemented to the fullest possible extent. Tomorrow marks the third anniversary of the unanimous adoption of Resolution 1325 by the United Nations Security Council. Honourable senators, I implore each of you to support and understand this landmark document. The changing face of war has brought us new challenges, and we must recognize the importance of 1325 in meeting these challenges and the role of women in contributing to the critical task of building sustainable peace for all.

Honourable senators, we must work to make Resolution 1325 a living reality. We cannot afford to keep losing our men, women and children in the name of war.

MANNING INNOVATION AWARDS

CONGRATULATIONS TO RECIPIENTS

Hon. Wilfred P. Moore: Honourable senators, I rise today to make a statement with regard to the Manning Innovation Awards, which were presented in Halifax, Nova Scotia, on Friday, October 3, 2003. This national awards program, which began in 1982, is named after former Alberta Premier Earnest Manning. The program is administered by the Manning Foundation, a national, non-profit organization funded by donations from businesses and private individuals.

This year, for the first time, all four winners are from Atlantic Canada. The Manning Principal Award winner was Nancy Mathis, who holds a doctorate in chemical engineering and is the 35-year-old President of Fredericton-based Mathis Instruments. Dr. Mathis developed a thermal effusivity sensor that detects the heat-transferring characteristics of a wide range of materials. This sensor is being used by companies around the world to test everything from the quality of pharmaceuticals to the safety of materials used in the aerospace industry. Dr. Mathis' award includes a \$100,000 tax-free prize.

The Manning Award of Distinction winner and the recipient of \$25,000 was Chris Griffiths, of St. John's, Newfoundland and Labrador. Mr. Griffiths invented the patented Griffiths Active Bracing System™, a one-piece glass fibre unit that forms the structural frame of all Garrison Guitars, which produces affordable, high-quality wooden guitars.

The two Innovation Award winners are from Nova Scotia, and they each received a \$10,000-dollar prize. Tim Edmonds, a professional engineer from Halifax who works with InNOVAcorp, was recognized for developing an air chamber crab processor that has transformed the fishery. The compressed air system safely and cost effectively removes the meat from hard shell segments of crab. The other Innovation Award winner is my friend Kirk Swinimer, a carpenter from Chester who was recognized for inventing a cone-shaped footing form for construction tubes. Mr. Swinimer's products, called BigFoot Systems, have drastically reduced labour costs for building decks, cottages and other structures with concrete post foundations.

We applaud these four individuals for their creative genius, and we congratulate them for the Manning Innovation Awards that they respectively received.

[Translation]

THE HONOURABLE MADELEINE PLAMONDON

CONGRATULATIONS ON RECEIVING THE NATIONAL ORDER OF QUEBEC

Hon. Lise Bacon: Honourable senators, if I may be allowed to sing the praises of a fellow senator, I wish to share with you my immense pride about an event which took place yesterday. I am sure all the people of beautiful Mauricie are proud of their senator, Madeleine Plamondon, who was awarded the National Order of Quebec in recognition of her contribution to the defence of consumers' rights and interests.

She has also thrown herself passionately into many other causes, such as the fight against poverty, respect for the rights of the chronically ill, women's liberation, and access to the legal system, as well as directing a number of studies on banking, insurance, and the protection of personal information in both the public and private sector.

To echo the words of Quebec Premier Charest, Quebec congratulates and thanks the men and women who have made exceptional contributions to the advancement of Quebec in all areas of human endeavour.

I wish to tell Senator Plamondon how very proud we are that she has been awarded the National Order of Quebec. This honour was much deserved.

• (1340)

[English]

S.H.A.R.E. AGRICULTURAL FOUNDATION

TWENTY-FIFTH ANNIVERSARY

Hon. Lorna Milne: Honourable senators, I rise to acknowledge 25 successful years of operation of the S.H.A.R.E. Agricultural Foundation, during which time this organization has helped thousands of poor people in a number of developing countries.

S.H.A.R.E. stands for "Sending Help and Resources Everywhere." The motivation to form S.H.A.R.E. was a visit to Kenya by David Armstrong of the town of Caledon, in Peel County, where he witnessed extreme poverty and hunger. After he returned home, David and his late brother Neil encouraged a number of dairy farmers in Peel and Halton counties to donate high-quality dairy cattle to poor countries where infant mortality was particularly high due to the lack of milk for infants and pregnant women.

S.H.A.R.E. was formed on the "pass on" principle. Herds of donated Canadian dairy cattle have been established in high-poverty areas on the basis that the offspring bulls are made available to local farmers to improve their native herds and that the milk produced by the donated herds is given to organizations to distribute to mothers and infants.

Hugh and Melba Beaty, a farm family in Halton County, gave up their farm operations to travel to South America with the first shipment of donated dairy cattle, to oversee the project and to ensure proper management of the cattle. A number of other farmers, including David Armstrong and Newton and Lorna Little, have visited projects from time to time to oversee their management and to ensure that the original objective of "pass on" continues to be met.

While S.H.A.R.E. was founded as and continues to be an NGO organization, CIDA has been a great source of advice and funding support. The involvement of local educational institutions, churches and organizations formed in the receiving countries to administer the projects has also been instrumental in the success of S.H.A.R.E. projects.

The members not only donate livestock, but also undertake broad fundraising from the wider Canadian community to finance other projects. For example, a funded project was the purchase of 75 water buffalo for donation to subsistence farmers living along the Amazon River, to provide milk, butter, cheese, meat and draft animal power for crop production. Funded projects must also be operated on the "pass on" principle. In this latter case, within a few years there was three times the number of water buffalo, which were, in turn, passed on to neighbouring communities where the need was urgent.

Funding has been provided to purchase equipment to increase rice production in West Africa, poultry projects in Jamaica, irrigation projects in Kenya, as well as livestock and poultry in Belize, Panama and Grenada. The list continues to grow. Over the past 25 years, more than 60 projects have been carried out in seven countries.

S.H.A.R.E.'s program of upgrading management skills in livestock, poultry and field crop production has greatly improved the success rate of projects and is now a key focus of their program.

The efforts and donations of the many people who support S.H.A.R.E. have helped alleviate poverty, hunger and death for thousands of people in the areas where there are no social safety nets. S.H.A.R.E. proves that individual Canadians can make a difference in alleviating poverty and hunger where the need is greatest.

Please join me in congratulating S.H.A.R.E. on 25 years of successful operation and for making a difference.

Hon. Senators: Hear, hear!

[Translation]

Thursday, October 30, 2003

ROUTINE PROCEEDINGS

TREASURY BOARD

REPORT ENTITLED
"CANADA'S PERFORMANCE 2003" TABLED

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table the report of the President of the Treasury Board, entitled "Canada's Performance 2003," along with various departmental reports.

CITIZENSHIP AND IMMIGRATION
CUSTOMS AND REVENUE AGENCY

2003 ANNUAL REPORTS TABLED

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, two copies of the document entitled "Annual report to Parliament on Immigration."

I also have the honour to table, pursuant to section 88 of the Canada Customs and Revenue Agency Act, chapter 17, and subsection 32(1), two copies of the report entitled "Annual Report to Parliament by the Canada Customs and Revenue Agency 2002-2003."

[English]

STUDY ON ISSUES AFFECTING
URBAN ABORIGINAL YOUTHREPORT OF ABORIGINAL PEOPLES
COMMITTEE TABLED

Hon. Thelma J. Chalifoux: Honourable senators, I have the honour to table the Sixth Report of the Standing Senate Committee on Aboriginal Peoples, entitled "Urban Aboriginal Youth — An Action Plan for Change."

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

On motion of Senator Chalifoux, report placed on Orders of the Day for consideration at the next sitting of the Senate.

CANADIAN ASSOCIATION
OF INSURANCE AND FINANCIAL ADVISORS
CANADIAN ASSOCIATION OF FINANCIAL PLANNERSPRIVATE BILL TO AMEND ACT OF INCORPORATION—
REPORT OF COMMITTEE

Hon. Richard H. Kroft, Chairman of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

FOURTEENTH REPORT

Your Committee, to which was referred Bill S-21, *An Act to amalgamate the Canadian Association of Insurance and Financial Advisors and The Canadian Association of financial Planners under the name the Financial Advisors Association of Canada*, has, in obedience to the Order of Reference of Monday, June 9, 2003, examined the said Bill and now reports the same with the following amendment:

Pages 3 and 4, clause 5:

Page 3: Replace line 32 with the following:

"by establishing best practices, promoting"; and

(b) Page 4: Replace line 15 with the following:

"(f) to promote and encourage ethical behavior."

Respectfully submitted,

RICHARD H. KROFT
Chairman

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

On motion of Senator Kroft, report placed on the Orders of the Day for consideration on Monday next.

• (1350)

CRIMINAL CODE

BILL TO AMEND—REPORT OF COMMITTEE

Leave having been given to revert to Reports of Committees.

Hon. George J. Furey, Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Thursday, October 30, 2003

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

EIGHTH REPORT

Your Committee, to which was referred Bill C-45, *An Act to amend the Criminal Code (criminal liability of organizations)*, has, in obedience to the Order of Reference of Wednesday, October 29, 2003, examined the said Bill and now reports the same without amendment but with observations, which are appended to this report.

Respectfully submitted,

GEORGE FUREY
Chair

OBSERVATIONS

to the Eighth Report of the
Standing Senate Committee on
Legal and Constitutional Affairs

Your Committee wishes it noted that the Honourable senators Andreychuk, Beaudoin and Joyal, P.C. have strongly objected to the fact that they believe that they have been unable to adequately fulfill their legislative duties. This has occurred because of a scheduling conflict with another Senate Committee, which was sitting outside its regular time.

Your Committee is sympathetic to these members' concerns and agrees that standing committees which are meeting during their regularly scheduled time should be given priority.

Your Committee believes that this issue must be brought to the attention of the Senate in order to ensure that this situation does not occur again.

The Hon. the Speaker: Honourable senators, when shall this bill be read a third time?

On motion of Senator Moore, with leave of the Senate and notwithstanding rule 58(1) (b), bill placed on the Orders of the Day for third reading later this day.

THE SENATE

NOTICE OF MOTION
FOR WEDNESDAY ADJOURNMENTS

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, pursuant to an exchange of yesterday afternoon, I give notice that, with leave of the Senate and notwithstanding rule 58(1)(h), later this day I will move:

That, for the remainder of the current session, when the Senate sits on a Wednesday it do adjourn no later than 4:00 p.m.;

That, if the business of the Senate has not been completed at 4:00 p.m., the Speaker shall interrupt the proceedings and the Senate will remain suspended until 8:00 p.m., and

That, should a vote be deferred on a Wednesday until 5:30 p.m. the same day, the Speaker shall interrupt the proceedings at 4:00 p.m. to suspend the sitting until 5:30 p.m. for the taking of the deferred vote.

[Translation]

OFFICIAL LANGUAGES

BILINGUAL STATUS OF CITY OF OTTAWA—
PRESENTATION OF PETITION

Hon. Jean-Robert Gauthier: Honourable senators, pursuant to rule 4(h), I have the honour to table, in this chamber,

1,000 additional signatures, for a total to date of 15,000 signatures, on a petition to declare Ottawa, the capital of Canada, a bilingual city, reflecting the country's linguistic duality.

The petitioners are calling on the Parliament of Canada to consider the following:

That the Canadian Constitution provides that English and French are the two official languages of our country and have equality of status and equal rights and privileges as to their use in all institutions of the government of Canada;

That section 16 of the *Constitution Act, 1867*, designates the city of Ottawa as the seat of government of Canada;

[English]

That citizens have the right in the national capital to have access to services provided by all institutions of the government of Canada in the official language of their choice, namely English or French;

That Ottawa, the capital of Canada, has a duty to reflect the linguistic duality at the heart of our collective identity and characteristic of the very nature of our country.

Therefore, your petitioners ask Parliament to confirm in the Constitution of Canada that Ottawa, the capital of Canada, is officially bilingual, pursuant to section 16 of the Constitution Act, from 1867 to 1982.

QUESTION PERIOD

THE SENATE

SCHEDULING OF COMMITTEE MEETINGS

Hon. Terry Stratton: Honourable senators, my question is addressed to the Leader of the Government in the Senate. Is she aware that the Standing Committee on Rules, Procedures and the Rights of Parliament met this morning outside of its normal hours?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I was aware that the Rules Committee met this morning. I understand there was some discussion of the subject in the chamber yesterday afternoon, although I was not present in the chamber at that time.

Senator Stratton: For the record, honourable senators, the committee met yesterday at noon during its normal time slot. Prior to that meeting, a notice went out requesting agreement from both whips that a meeting be scheduled for this morning at 10 o'clock. As whip on the opposition side, I could not agree to that request because of the commitment on the part of our members to other events this morning that were taking place, that is, other committee meetings.

For the record, just so that honourable senators will know and be aware, for example, today the Standing Senate Committee on Legal and Constitutional Affairs, was reviewing the Westray bill. Our members of the Standing Senate Committee on Legal and Constitutional Affairs who are also on the Rules Committee are Senators Andreychuk and Beaudoin. It is mandated by this Senate chamber that those committee members attend those committee meeting.

Senator Oliver, who is Chair of the Agriculture Committee, met with his committee at 8:30 this morning, as mandated by this Senate chamber.

Senator Robertson and myself were attending a meeting of the Standing Committee on Internal Economy, Budgets and Administration, as mandated by the Senate chamber. We were discussing Supplementary Estimates and the budget for the next fiscal year in detail, line by line.

Five members of those various committees are also members of the Rules Committee. We could not cover both. The decision on our side was that we could only attend those committees that were mandated by this chamber. We could not, therefore, attend the Rules Committee meeting that was arbitrarily set by the chair to meet at 10 o'clock this morning, despite the objection of this side. Would the minister care to comment, please?

Senator Carstairs: As the honourable senator knows, the whips on both sides of this chamber have the option of substituting members for all committees. That is a common practice in this chamber; it is done with great regularity.

Senator Stratton: Forgive me, honourable senators, but I disagree. You do not throw someone into a committee meeting to deal with an issue as complicated as the ethics bill and the ethics package who does not have the intimate knowledge held by those senators who have been attending on a regular basis. This is not a case in which you just throw someone in for the sake of having a member there, because that individual will know nothing about the issues. It is wrong to do that. That practice should cease because we do not have sufficient numbers to support it.

• (1400)

Hon. John Lynch-Staunton (Leader of the Opposition): We are trying to get from the Leader of the Government some support and sympathy for the situation in which the opposition finds itself. It is difficult to staff committees within the present time slots, but I think we are doing a reasonably good job because we know in advance when committees will sit.

We were advised only the day before, without any discussion in the Rules Committee, without any request by the chair of that committee of the members present for their input, that we would be sitting on a day and at a time that was not previously scheduled. As has been explained, our five members had commitments to other committees. It is easy to say that we can

substitute, but it is not our practice to send benchwarmers. We do not send senators to represent us at committees just to boast that we have our numbers there. We send people for the purpose of continuity, and that continuity could not be upheld this morning at the Rules Committee.

I am asking for some understanding of our situation. It is impossible for the opposition to be in all places at all times, unlike the other side, which has enough members to do so.

I am told that the Rules Committee has now decided to meet tomorrow at 10 o'clock. I understand that it is unlikely that the Senate will be sitting, although perhaps it will be. In the event that we are not, certain senators have already planned to leave for their homes today.

I also understand that that committee will not hear any more witnesses this week, although I understand that there are witnesses on the list who might be available next week, and not the most insignificant ones, yet we are told that clause-by-clause consideration must be done tomorrow.

Since this has all been done under the government's direction, why are certain agreements and traditions being broken? Why is the scheduling of committees being broken? What is the urgency that requires this committee to meet on a day that the Senate may not be sitting?

Senator Carstairs: To deal with the last question, I think that is the preferred option, given the objection to sitting at times when committees are in conflict. Generally speaking, no committees sit on Fridays. I made it clear some time ago that the Senate would be sitting on Mondays and Fridays. However, I am prepared to forgo our sitting on Friday in order for this committee to sit and spend the time needed to work on this bill.

I was in the committee on Tuesday at 11:30 when it was announced by the chair that the steering committee would meet. My understanding is that a decision was made then that they would sit Thursday. Therefore, in fact, there was two days' notice.

Senator Lynch-Staunton: My point is that there was no consultation with the members of the committee. The courtesy was not extended to them of asking whether it was convenient for them to sit on Thursday at a specified hour. Had that been done, the members would have said no, but would have asked about another time. However, there was no discussion. The date and time was unilaterally imposed to meet a deadline that has yet to be explained.

Hon. A. Raynell Andreychuk: To correct the record, the steering committee was not unanimous. The position of this side, which has already been articulated, was put forward to the steering committee. The government side insisted on proceeding despite this side indicating its difficulties. Therefore, I was, in essence, outvoted in the steering committee. The matter was not raised in the committee. Our whip spoke against it because we did not have sufficient members.

The Standing Senate Committee on Legal and Constitutional Affairs was mandated this morning to deal with the Westray bill, an incredibly emotional and important bill. I do not believe that members could very quickly be changed to sit on that committee. It was shameful that there were three members from the opposition and three members, then eventually four members, of the government, when there should have been a full complement for a bill of such importance.

People had travelled here and waited a long time, and the chair gave compelling reasons why we should, as we were mandated by the chamber, go to clause-by-clause study immediately. It was noted on the record that that is not the way in which the Senate operates, but we did the best we could in that committee.

There was no compelling emergency pointed out in the other committee. I think it would be wrong to say that there was two days' notice. There was an indication of the government's wishes, to which this side responded negatively due to the lack of members available for that time slot.

Senator Carstairs: The honourable senator raises the Westray bill, and I must say I am delighted with the speed with which it was reported to this chamber. Having said that, however, we have only been dealing with the Westray bill this week. We have managed to take it through first and second readings, committee stage, and later this day we will go to third reading stage, which is a remarkable accomplishment for any legislation.

On the other hand, we have been dealing with the ethics package for over a year. It seems to me that if there was any urgency on any legislation, it was with respect to the ethics package.

Senator Andreychuk: I do not believe that is fair. Perhaps the Leader of the Government could read the record of the Standing Senate Committee on Legal and Constitutional Affairs. That record does not reflect well the way senators normally work, to go through first and second readings, clause-by-clause consideration and third reading so quickly. We were not given the time we should have had to study that bill. However, there was compelling human emotion and dynamic. These people who lost family members in Westray have been waiting for a very long time. If I felt that there was a gun put to my head in order to pass that bill, it was because of those people who died.

Where is that element in the code of conduct?

Senator Carstairs: Honourable senators, that sounds very emotional and wonderful. However, as the honourable senator knows full well, the Westray bill, as it is now called, does not impact on that terrible suffering. It is hoped that it will deal in the future with companies and individuals who act in an irresponsible way, and that is good. However, I understand that the legislation is not retroactive.

[Senator Andreychuk]

Senator Andreychuk: It is not a question of retroactivity. Would the Leader of the Government not agree that the people who were touched by Westray have been the guiding force to have this bill passed in order that no more families will suffer as they did?

Senator Carstairs: I could not agree more with the honourable senator. Having been at Springhill when that disaster occurred, and having worked with the volunteers who were providing relief, no one understands that better than I do.

[Translation]

Hon. Gérald-A. Beaudoin: Honourable senators, I would like to come back to the explanation given by the leader of the opposition. There are not many of us on this side. Speaking for myself, I sit on several committees, including the Committee on Rules, Procedures and the Rights of Parliament, the Committee on Legal and Constitutional Affairs, the Committee on Human Rights, and the Standing Senate Committee on Official Languages.

• (1410)

This morning, I gave priority to the Committee on Legal and Constitutional Affairs because I am the deputy-chair of that committee. But I am also a member of the Committee on Rules, Procedures and the Rights of Parliament, which was sitting at the same time. We should establish a policy whereby we do what we can. It is humanly impossible to be in two places at once — at least, as far as anyone knows. We will have to come back to this. It may be difficult, but we have no choice, we have to find a solution!

[English]

Senator Carstairs: Honourable senators, it is true that the numbers on the other side are decreasing. The experience is one that I know full well, having been the lone member of my party in a legislative assembly from 1986 to 1988, when three committees would sit at the same time. Since I could not divide myself physically in three, I had to make choices. Honourable senators on the other side will have to make choices as well.

Senator Lynch-Staunton: You knew when they sat, though.

Senator Andreychuk: Honourable senators, I have a supplementary question regarding the choices.

We had an agreement. Perhaps it was by convention and, if so, perhaps it should be a rule. We know those choices have to go beyond, to balance an individual senator's needs and experiences, and the management and conduct of the work done by the opposition. In a democracy, the minority opposition has to be taken into account. I thought we had an agreement between both sides that the whips would manage the work and that it would not be at the call and discretion of the chair, which could lead to difficulties. I thought it would be managed by the leadership. Therefore, both whips had to agree to set the time.

Surely, our consideration of the Westray and code of conduct matters could have been taken into account and been deferred a day or two, when our whip said he could not manage because of the intensity of the workload.

To the credit of Senator Baker, Senator Moore and Senator Beaudoin, who have the legal skills to address and do some justice to the Westray bill, at least we can say we questioned the legislation. In the past, we have been chastised in the courts for not doing our jobs, for pushing through bills and rubber stamping them. We do not want to be rubber stamps. That is why we needed particular senators at the committee. They happened to be the same senators who were at the Rules Committee. We did not have the benefit of Senator Joyal, who has raised many Criminal Code issues and particularly the codifying of certain sections.

Again, I thought we had an agreement between the leadership or an agreement of this house that we would not sit unless the leadership said yes. That agreement was violated when our whip said no, and that is a personal choice that is incredibly difficult to make.

Senator Carstairs: Honourable senators, there is no rule of the Senate, as the honourable senator knows. We have done everything we can to accommodate the other side. The whips have been able to agree many times, but today is one of those times when it is not possible.

Senator Lynch-Staunton: So who cares? Roll on, steamroller.

Hon. Donald H. Oliver: Honourable senators, I am a member of the Standing Senate Committee on National Finance, which meets at the same time as the Rules Committee. Some honourable senators would know that I have a very big interest in the so-called code of conduct or ethics package. It is something that I have been working on since coming to the Senate many years ago. Indeed, a portion of it culminated in a report that was tabled in this chamber in 1997.

I attended the meeting of the Rules Committee yesterday and did not attend the meeting of the National Finance Committee, which was meeting at the same time. I found that the debate and the questions asked were extremely important and very thorough. For instance, Senator Grafstein raised a very important issue about whether the issue is really one of personal ethics or a question of a code of conduct. That is something that must be addressed further.

Throughout the other hearings I have attended in the Rules Committee, there have been very serious and important questions raised about the privileges of members of this chamber. Even more important questions have been raised about the effects of those privileges by certain judicial interference, judicial activism and judicial interpretation of the rules of this chamber. That points to the fact that there are still very important matters in the bill before the committee that bear hearing from important witnesses, like former Justice La Forest, experts such as Donald

Savoie and many others. To cut off debate and to cut off the right of these witnesses to appear before the committee to give committee members the benefit of their expertise and their views is intrinsically wrong.

I was at yesterday's meeting and knew nothing about the meeting this morning at 10 o'clock. This morning at 8:30 I was chairing an important meeting of the Standing Senate Committee on Agriculture and Forestry. We had senior officials from the Department of Agriculture and Agri-Food appearing before us on the BSE issue. I raised a question yesterday in Question Period about BSE, and it is something that affects farmers in a major way. We are talking about an industry that produces more than \$4 billion in assets for Canadians each year. BSE is a crisis. It was an important meeting.

For this and for several other reasons, does the Honourable Leader of the Government in the Senate agree that natural justice and general fairness are being denied by not affording us an opportunity to sit on important committees and to participate meaningfully in debates on something as important as the privileges of members of this chamber?

Senator Carstairs: Honourable senators, it is interesting that we have heard discussion today from those who were mandated to appear by the Senate on this committee. I have raised the issue of substitutions. It is interesting to note that the original senators mandated to sit for the opposition were Senators Andreychuk, Di Nino, Robertson, Stratton and Murray. Obviously, substitutions have been made on their side. I respect that. That is the right of the Senate. Substitutions could have been made again today.

Senator Stratton: Honourable senators, our membership on that committee has been consistent. Senator Murray had surgery. He cannot attend. He cannot drive an automobile. We did put someone there. For goodness sake, that is a ridiculously stupid argument — and forgive me — because we have been consistent in our membership on that committee this entire session.

Senator Carstairs: With the greatest of respect, I would refer the honourable senator to the Committee of Selection, the list of alphabetical committees, which says that the members at the time of the Committee of Selection were Senators Andreychuk, Bacon, Carstairs, Robichaud, Di Nino, Grafstein, Joyal, Losier-Cool, Lynch-Staunton, Kinsella, Milne, Murray, Pépin, Pitfield, Robertson, Rompkey, Smith, Stratton and Wiebe.

Hon. Brenda M. Robertson: Honourable senators, usually we work in this chamber with a degree of courtesy. I am the deputy chair of the Standing Committee on Internal Economy, Budgets and Administration. The Internal Economy Committee has a specific time slot and we sit at that time. There is absolutely no way I could have gotten to the Rules Committee. I did not want to miss the Rules Committee meeting because if that committee ever comes to a decision on what to do, for instance, with *Vaid*, it comes to the Internal Economy Committee to find the money.

I enjoy the Rules Committee, but I find it very disheartening, very discouraging, when a chair, without discussing it with anyone — not our whip, not our leader — decides to hold meetings any old time at all.

• (1420)

I know what you are saying: Fill in with someone. We have some heavy legislation right now, legislation that impacts so much on this chamber and on the people whom we represent. If the legislation were even of a more casual nature, I would not be so offended.

I cannot go to the meeting tomorrow. Other plans have been made for me. I do not make my own plans. I make a lot of them, but I try to work in cooperation with my colleagues. That is what this is all about. If the government leader cannot and will not do anything about the meetings, I hope she will express to the chair that she is behaving in a manner that does not do any favours for this chamber. If we do not have the ability to be courteous to each other, it is a sad state of affairs and it should not be allowed to continue.

Senator Carstairs: Honourable senators, the chair of this committee did not act without discussing the scheduling with others. She called a steering committee meeting for 11:30 on Tuesday. All members of that steering committee attended. You are quite right, Senator Andreychuk did not agree with the decision taken, but to say that the chair did not discuss it with anyone is simply not true.

Honourable senators, I very much respect the fact that Senator Robertson attended the Standing Committee on Internal Economy, Budgets and Administration. It is my understanding that that committee adjourned at 11:00. The Rules Committee continued to sit until 1:30. Therefore, the honourable senator could have been at the Rules Committee for two and a half hours.

I do recognize the pressure on the other side, given your limited numbers. Unfortunately, I have no ability to appoint additional opposition members to the other side.

Senator Lynch-Staunton: Why is it that the government leader has a complete misunderstanding of our position? She is suggesting to us that we should keep our agendas open and wait endlessly for the government's schedule. What the government leader does not seem to accept is that a decision to sit on Friday was given to all members of the committee this morning. It was not even discussed in committee yesterday, Wednesday.

Sitting this morning was not discussed Wednesday in committee. Yes, the steering committee met. Yes, the majority agreed. Fine. However, that information was not given to committee members as such. They were not even asked if they all agreed. The method of informing committee members was by the traditional notice that goes out.

The transcript does not show any statement by the chairman to the effect that the committee would be sitting this morning. In addition, and even worse, a notice comes out to say that it will also sit on Friday. No discussion in committee. No canvassing of members. No basic courtesy to ask about the Senate schedule.

While the Senate does not usually sit on Fridays, still there was no effort to find out whether the Senate would be sitting, first. That was not done. If in fact it were done, certainly we have not been informed as to whether we are sitting on Friday. I hope the chair was not given privileged information.

Second, on the assumption that we are not sitting on Friday, all senators make arrangements to be elsewhere.

The government leader told Senator Robertson that Internal Economy adjourned at 11:00 and that, as such, she should have hurried over to the Rules Committee, which sat until 1:30. Is the government leader listening? Internal Economy did not stop at 11:00. It sat until 12:30. For the government leader to suggest to Senator Robertson that she should leave one committee and rush to another one, as if her agenda has to be tailored to the priorities of the government, is unheard of.

Hon. Jeremiah S. Grafstein: Honourable senators, I sat on the committee and have sat on the committee for some time. Today was a very difficult day for me, as a member of this side. Over the years, I have been very clear that I do not think a committee has legitimacy unless both sides are represented at committee. Otherwise, there is no ethical legitimacy.

As a result, when the deputy chairman of the committee moved adjournment in a voice vote, I supported that, and I want to go on record as having done so. Why? I feel that that action is very unparliamentary and contrary to *lex parliamenti*. There is an opposition in the Senate, prepared and eager to participate. Because of scheduling mandated by this house and an emergency matter before the committee, the committee is caused to meet at an extraordinary time. That puts members opposite in an invidious position. That makes me feel, as a senator, that my privileges in effect have been offended because I do not feel I am being fair to the opposition or to the subject matter.

I welcome the comments of Senator Andreychuk and Senator Beaudoin. They have been following this matter very carefully. We proceeded with two witnesses. The second witness had not even read the bill. He had not even read the bill. Then we were told that if we can get another witness — and others will speak to that — we would hear that witness and then go into clause-by-clause consideration. We really have not spent any time, quite frankly, on clause-by-clause discussion; that just started today. This is the first time we focused, not on the principles of the bill but on what is in the bill itself.

I urge the government leader and our chairman and other honourable senators on our side to think very carefully here about how we proceed here. We are dealing with an ethics bill. I have some questions about this ethics bill because, as one of the witnesses said, the problem with ethics is that they go beyond the law. I like the rule of law. I have difficulty when it comes to going beyond the rule of law, because it is not clear to me as to what it is.

Therefore I ask the government —

The Hon. the Speaker: Honourable senators, I am sorry to advise that the time for Question Period has expired. I see the government leader leaving, so we will move to Orders of the Day.

[Translation]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, under Government Business, Reports of Committees, I would like to call Item No. 1, the report of the Standing Senate Committee on National Finance, and then return to the order proposed in the Order Paper.

Hon. Marcel Prud'homme: Honourable senators, could we have a clarification? That is not what I see.

Senator Robichaud: Honourable senators, I am referring to the *Order Paper and Notice Paper* placed on the desk of every honourable senator. Every senator has a copy. On page 14, under Reports of Committees, I wish to call Item No. 1 first, and then return to the order proposed in the Order Paper.

[English]

THE ESTIMATES, 2003-04

REPORT OF NATIONAL FINANCE COMMITTEE
ON SUPPLEMENTARY ESTIMATES (A)—
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Biron, for the adoption of the ninth report of the Standing Senate Committee on National Finance (Supplementary Estimates (A) 2003-2004), presented in the Senate on October 22, 2003.

Hon. Gerald J. Comeau: Honourable senators, I am pleased to enter the debate on Supplementary Estimates (A).

The Standing Senate Committee on National Finance heard from Treasury Board on the Supplementary Estimates at two meetings, one on September 30 and one, a week later, on

October 7. Originally, there was only to be one meeting, but a second meeting was needed to receive delayed answers to several questions that had been raised at the first meeting.

• (1430)

The fact that the second meeting was needed underscores some of the barriers that we face when we try to study Estimates. We are simply not provided with enough information to give proper scrutiny to the funding requests that are placed before us.

Let me preface my remarks by saying that I very much appreciate the efforts made by officials from Treasury Board to respond to our questions. They are often placed in a position where they must come prepared to answer dozens of questions on votes from several different departments, and they cannot anticipate every possible question. For that, we have to give them a great deal of sympathy. They must rely heavily upon other departments to ensure that they are properly armed prior to their visit to our committee. Further, given that they are public servants, they are limited in their ability to respond to questions of policy, particularly when those policies are those of other ministries.

We ask questions, and sometimes Treasury Board officials cannot answer them; sometimes they can only promise to get back to us. Very simply, neither we nor Treasury Board are given enough information prior to our first meeting. The information in the blue books is very thin. Explanations tend to be no more than a couple of lines, and often those explanations are meaningless. Sometimes even the wording of the various votes can be confusing. To give you an example, on page 47, we found that vote L30a, which read as follows:

The issuance and payment of non-interest bearing, non-negotiable demand notes in an amount not to exceed (open bracket) 193.5 million dollars minus 96.5 million dollars (close bracket) 97 million dollars in accordance with the International Development (open bracket) Financial Institutions (close bracket) Assistance Act, for the purpose of contributions to the International Financial Institution Fund Accounts — one dollar.

Anyone who tries to go through that kind of garble has to earn a Ph.D. in finance. I will translate what it means. The bottom line is that this reduces the assistance voted in the Main Estimates. That is what it means. It may have been simpler just to say that "This is to reduce to \$97 million the amount voted in the Main Estimates," but simplicity and clarity is not what the supply process is all about.

Senator Doody asked the officials what the International Financial Institution Fund Account was and they did not know what this institution was. Honourable senators, I realize that some of the questions may be unexpected, but the Canadian International Development Agency should have ensured that this was in the officials' briefing book. It should not have been necessary to ask the question. The Estimates documents themselves, or some other document made available to us prior to the meeting, should have given a very short, concise explanation of what this account is.

This is not the only example of confused wording. For three consecutive days after these Estimates were tabled, senators on this side raised the matter of funding for the firearms registry. Vote 7a ends with the wording "to provide a further amount of" and we look across the page to see a column that is headed by the words "new appropriation," the sum of \$10 million. To almost anyone, common sense would have said that this means that there is an extra vote of an extra \$10 million to the gun registry. However, somehow, these very clear words at the top of page 88 of the Supplementary Estimates book are superseded at the bottom by the words:

This amount represents the operating budget carry forward for Justice designated for the Canadian Firearms Centre.

The government argues that that is not new money, merely money that the department is allowed to carry forward from one year to the next. Parliament is being asked to approve the vote carry forward some six months after the fiscal year ended. Why then, honourable senators, is the vote not worded to the effect of: "To allow the department to carry forward funds voted but not used in the 2002-03 fiscal year"? That would make things clearer for parliamentarians.

Honourable senators, no matter how this is labelled, the bottom line is that we are voting the gun registry an extra \$10 million this fiscal year over and above what was voted in March and June. To suggest otherwise simply clouds the issue, and is not true. For that matter, how are we to know that, in fact, this money was left over from the budget of the Canadian Firearms Program? The explanation simply says, "operating budget carry forward for Justice designated for the Canadian Firearms Centre."

The money we voted last year fell under the umbrella of Justice vote 1 "operating." The Canadian Firearms Centre may have been part of the explanation for last year's Justice vote 1, but explanations do not have the force of law. Justice vote 1 covers expenses such as salaries of departmental lawyers, translation of the minister's press releases, new justice initiatives, crime prevention, travel of public servants to conferences and the department Web site, to give but a few examples.

How did exactly \$10 million come to be designated for this one purpose but not for the others? The official version of that answer has something to do with Bill C-10 not passing last year. However, I note that the Supplementary Estimates include \$11 million for Justice vote 1b "operating," a figure not that far removed from the extra money for the registry. The Justice vote is mainly for the Child-centred Family Law Strategy and the Integrated Proceeds of Crime Initiative.

Why was the amount carried over from this umbrella Justice vote 1 not applied to these other purposes rather than to the

Canadian Firearms Centre? It is, perhaps, because the government gets points for new spending in those areas but loses political capital if it spends more money on the gun registry.

In committee, I focused my questions on the Canadian Firearms Centre, which the government has now turned into a full department. Given that this is beyond any doubt the most controversial item in the Supplementary Estimates, it would have been useful to see extensive written material explaining the budget of this new department. Given that consultants ate up more than half of its resources, it would have been helpful to find out and to be told at the outset that most of this was for computer services.

I asked how many employees its salaries and wages budgets of \$22.6 million covered, and learned a week later, at the next meeting, that this was for 279 employees, of whom 153 are clerical. A quick bit of math told me that this works out to approximately \$81,000 per employee, a figure confirmed by the Treasury Board. Maybe I am showing my age, but even if you consider that this includes benefits, it does seem a bit on the high side for an organization where more than half of its staff is, in fact, clerical.

These Supplementary Estimates also transfer to this new department and the RCMP some \$105 million that was originally voted to Justice in the Main Estimates. I know that the registry is controversial. Some senators support it; others do not. I understand as well that the argument that created the separate department would provide some increased element of control and accountability, although at the same time, as a separate department, it will face other costs.

Let us put aside for a minute the issue of whether there ought to be a firearms registry — I hate to put that aside, but I will for a few minutes — and how it ought to be structured, and focus on the way this transfer of funds has been presented to Parliament.

Senators on this side were troubled in committee at the way in which the transfer is recorded in the Summary of Changes to Appropriations table at the front of the Supplementary Estimates. Normally, when funds are moved from one vote to the other, the net result is a zero. If you turn to page 12 of Supplementary Estimates (A), within the Department of Justice, the same department from which the firearms money comes, we also see \$45 million transferred to a new entity — the Courts Administration Service, under vote 27a. However, this is shown as being offset by an equal amount under Justice votes 30 and 55. It has no effects on the total Estimates.

Further, in the past, even transfers between departments have been shown as a net zero on the total estimates, an example being last year's transfer of CMHC from the Privy Council to Transport. Yet, when we get to page 14, we see total transfers of \$105 million. No adjustment was made in the presentation to subtract the funds transferred to the Canadian Firearms Centre for Justice votes 1 and 5. Therefore, \$105 million is added in with the voted items to give us total voted funds of \$64.7 million.

• (1440)

We checked back over several years and could find no other instance in Supplementary Estimates where the total transfer was anything other than zero. We asked about this, and at first Mr. Mike Joyce from Treasury Board tried to defend it on the basis that, "It goes to the clarity of the document." It seems that the Treasury Board wanted to ensure that we saw that it was a transfer. That is why this transfer is shown in this way, while others in the same set of Supplementary Estimates were netted out. This is not a terribly consistent way to report to Parliament.

There was an exchange of views between Mr. Joyce, on one hand, and Senator Lynch-Staunton and myself on the other. Mr. Joyce agreed to look further into this. To his credit, he returned to the committee the following week and said:

To confirm the response I gave last week, Mr. Chairman, the treatment of the transfer from the Department of Justice to the Solicitor General is not consistent with our previous practice.

It was done with good intentions because we wanted to ensure it was visible. I believe we achieved that objective.

However, it is inconsistent with previous practices. You have my assurance that the next time we do this we will ensure a consistent treatment of transfers.

Honourable senators, part of the problem with this particular accounting is that it creates a difference between the spending authorities that have been requested through legislation and the authorities that are shown to have been requested in the Supplementary Estimates.

Thus, the information presented to Parliament is factually incorrect. In an attempt to ensure that we got the message, the Treasury Board gave us numbers that very simply did not add up. When the supply bill becomes law, we have only voted \$64.6 billion, yet, according to the Supplementary Estimates, we will have voted \$64.7 billion. Once again, Parliament has not been given accurate or meaningful information.

Honourable senators, I will conclude by again stressing the need for Treasury Board to give more information and to put clearer information in the documents that it provides to Parliament in support of the government's spending proposals.

Some of us are trying to find the time to attend one committee meeting after another, and we are sometimes called upon to act as warm bodies, as the Leader of the Government on the other side suggests should be done, a view with which I disagree entirely. Honourable senators, we need to be able to not only wade through this material but also to understand it so that we can present good, meaningful reports back to this whole chamber with the kind of information that you depend on us to provide. This cannot be done if we have only "warm bodies" sitting in on a

committee that deals with extremely complicated matters such as this. We must be able to spend enough time to wade through the information that is provided to us in order to evaluate the Supplementary Estimates and the Main Estimates. You cannot always depend on your research staff. We must be able to do this ourselves in order to understand it fully. To achieve this, Treasury Board must provide documents that we can read, understand and digest. This information should be consistent from presentation to presentation and it should be accompanied with clear, concise and easy-to-understand explanations regarding changes and departures from previous procedures.

I recommend that everyone read the Supplementary Estimates. They are great reading. If you want to fall to sleep around 11 o'clock in the evening, they will certainly help you do that. Thank you very much.

Hon. Ethel Cochrane: Would the Honourable Senator Comeau take a question?

Senator Comeau: I certainly will.

Senator Cochrane: My question relates to the firearms registry. I understand that we have already spent \$1 billion on the firearms registry.

Senator Lynch-Staunton: Not yet, but we are getting there.

Senator Comeau: We will be there in just a few weeks.

Senator Cochrane: Is this more money that will be added to what was to be the final figure?

Senator Comeau: No. For a period of time in the previous fiscal year, \$10 million had not been spent. The department requested that this be carried forward, but, as it was worded in the Supplementary Estimates, it appeared to be a new appropriation. Obviously, that set the alarm bells off in some of our minds. Some of us saw it as a new appropriation of \$10 million, so obviously, we were going to question it. Once we did, we found out that it was not a new appropriation. Even though it is called a new appropriation, it is in fact money carried over from last year. According to the officials of the Treasury Board, it is not new spending which has been placed in the Supplementary Estimates.

The Hon. the Speaker: I would advise that Senator Comeau's time to speak has expired.

Hon. C. William Doody: I wish to say just a few words, honourable senators. Senator Comeau and Senator Oliver have pretty well covered the points I want to make. However, I do want to emphasize the fact that the examination of the Estimates by the Standing Senate Committee on National Finance is of absolutely tremendous value to the whole process of government accountability. No one else in this huge labyrinth takes any time or effort to examine the billions and billions of dollars worth of funding that goes into government expenditures every year.

It is important that the Senate Finance Committee be given ample time to examine these Estimates and, more important, that it be given ample information to make its work meaningful and helpful. One of our problems is that we spend so much time asking questions about votes that should already have been explained in the documents that we are given, that we use up most of the valuable time that we should be spending examining the purpose, the intent and usefulness of the expenditures themselves.

A case in point is the Canadian Heritage Vote 70A. We are voting \$31 million to the National Capital Commission. We are told in the explanatory notes that this is for the purpose of acquiring real property in Gatineau, across the river from here. No background information is provided beyond that. We are not told what the government plans to buy, what the purpose of it is, or where the money will go. It is just that they want to buy some real estate across the river. The Treasury Board officials had to look it up. They had to go out and find the information and bring it back to us. As it develops, they were able to tell us the money will be used to buy the Scott Paper lands across the river. No one can quarrel with that. The intent is admirable. It will be an additional asset to the National Capital Commission and to the our site.

That is the sort of situation that we run into all the time when dealing with the Estimates.

Senator Comeau quite properly commended the representatives from Treasury Board for being so open and helpful in trying to provide the information to us. Had we been given adequate briefing material to start with, I think we would have saved them a lot of embarrassment and saved ourselves a lot of time, and the people of this country would have been far better served.

Even when we got the information on this one small item — \$31 million is a small item now — the whole process was still suspicious. The deal was struck, or was it really struck, or was it just an agreement in principle? Did the National Capital Commission have \$31 million left in its budget to buy this, or did it have to wait to get parliamentary approval? Those questions are still up in the air. We are told that they struck an agreement in principle, depending on parliamentary approval, so we are giving them the benefit of the doubt and saying that is what happened. Still, the NCC is one of these independent agencies that operates outside the umbrella of parliamentary scrutiny, to a large degree, and it has been the subject of some examination by your committee on previous occasions. I have no doubt we will be hearing from them again before too long.

Another major problem for us is this habit that Treasury Board is developing in spreading funding requests or appropriations over various subheads and over various departments. You would need to be a Sherlock Holmes with a staff behind you to be able to track down how much a particular project actually costs. The Canadian Land Mine Fund is an example. Everybody knows that

the Canadian Land Mine Fund is an admirable exercise in civilizing parts of the world that desperately need help, but trying to find out how much money the people of Canada are actually devoting to this cause is an exercise in frustration.

• (1450)

We eventually discovered that there are four different votes for the Canadian Land Mine Fund under four different departments and four different areas, and nowhere in the Estimates was there anything to show that one could look elsewhere to find additional funds. We just had to thumb through these pages and pages of the blue book to try to get on to it.

Why would we say that the landmine fund was suspect in the beginning? We would not. It is a perfectly normal allocation of funds. Why do they make life difficult for parliamentarians to scrutinize their work? I have no idea. I suspect it is just the strange and wonderful way the bureaucracy works.

There are various other items of interest, of course. One of greatest interest and concern relates to a question that Senator Cochrane just raised. Put shortly, it is how much is the gun registry costing. I defy anybody in either House to be able to answer that question with a sum total that is anywhere close to being accurate. There are numbers that have been shifted from department to department, have been carried over, shifted back and sent elsewhere.

With respect to the numbers of employees, one question we asked somewhere along the lines was how many employees did the registry have, and we were told there were none. That defies the imagination. How can they manage to spend hundreds of millions of dollars with no employees? They manage to do it. These people are not actually working for the gun registry. They are seconded from this department, that department and some other department. Later on, when we get it all put together, it will have a separate entity of its own, and then they will be employees of the gun registry, and we will have real people about whom we can report to you. In the meantime, as Senator Comeau has pointed out, the miracle is that only that many people are working there because, at \$81,000 a head, it is a wonder they have not been trampled to death with applicants.

I suspect that \$81,000 a head is not quite accurate, either, but those are the numbers we were given and they are the numbers we have to work with.

I will not detain honourable senators any longer, except to say that the time and effort that the finance committee spends on examining these Estimates is probably some of the time best spent by any committee in either of the two Houses. I think the departments of the government should be more forthcoming, and should be spending more time and effort in providing us with the information that we need to do our work.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I listened with interest to the comments of both Senator Comeau and Senator Doody. It seems to me they have both requested a very legitimate thing: that perhaps we should make this whole process more user-friendly on the basis that the parliamentarians are the users of these Estimates, and if they are to do their job appropriately, it needs to be made easier for them.

In light of that, let me assure my colleagues that I will write to the minister of the Treasury Board, include your comments in my letter and add my voice to making these Estimates more user-friendly in the future.

Hon. Senators: Hear, hear!

Hon. John Lynch-Staunton (Leader of the Opposition): Those are welcome statements. Before adjourning the debate, I would like to tell the minister that the *Backgrounder*, a separate document that comes with the blue book, has more information insofar as describing the purpose of the Estimates than the blue book itself has. We are just asking that the two be integrated. It is a simple request, which thus far has been ignored.

On motion of Senator Lynch-Staunton, debate adjourned.

VISITORS IN THE GALLERY

The Hon. the Speaker: Honourable senators, before going to the next item, I wish to draw your attention to the presence in our gallery of three people: Claudine Tayaye Bibi is President of the Programs for the Call to Women's Action in the Democratic Republic of the Congo. Mary Okumu, Regional Coordinator of El Taller Africa, is from Kenya. Kemi Ogunsanya is a senior conflict resolution training officer with the African Centre for the Constructive Resolution of Disputes. She is from South Africa. All three are members of Women Waging Peace, and they are the guests of Senator Jaffer.

Welcome to the Senate of Canada.

Hon. Senators: Hear, hear!

LIBRARY AND ARCHIVES OF CANADA BILL

SECOND READING—DEBATE SUSPENDED

Hon. Sharon Carstairs (Leader of the Government) moved second reading of Bill C-36, to establish the Library and Archives of Canada, to amend the Copyright Act and to amend certain Acts in consequence.

She said: Honourable senators, I am pleased to have this opportunity to speak in favour of Bill C-36, the Library and Archives of Canada Act. With this piece of legislation, the government intends to create an important new institution, one that will play a central role in the preservation and promotion of Canada's documentary heritage.

I am encouraged to note that there is a growing demand for this kind of information among Canadians. From coast to coast, the people of this land want to know more about the history and culture of their country, whether it is the genealogical details of their family, the wonderful achievements of our writers and musicians, the contributions made by members of their community to the growth and development of Canada, or, perhaps, even the role played by the Government of Canada at some defining moment in our history. That is why I am so pleased to take part in this debate.

After studying this bill, it is clear that it will give Canadians a new, modern cultural institution. This new institution will have the tools it needs to protect and promote our country's documentary heritage. It will give Canadians the opportunity to satisfy our thirst for knowledge about all of the many facets of our country.

The new knowledge institution created as a result of this bill will be the ideal resource to achieve these goals. One of the ways the Library and Archives Canada will do that is with a new mandate, one that is broader than those of the two existing institutions from which it will spring.

By merging the National Library of Canada and the National Archives of Canada to create the new Library and Archives of Canada, the government is recognizing a situation that has been evolving over the last few years. Anyone familiar with these two important institutions knows that they have been working closely together for many years. Already the two share many administrative services such as finance, human resources, accommodations and security, as well as information and preservation services.

The union of library and archival sciences is a trend that has been observed at the university level. Increasingly, the courses being given involve both disciplines. Given this new reality, it is, perhaps, not surprising that the National Library and the National Archives were the ones who originally proposed this course of action that we are now pursuing.

The mandate for this new agency will be established on the foundation of the respective mandates of the National Library and the National Archives of Canada. Indeed, Library and Archives Canada will continue to pursue all the activities now conducted separately by the two institutions. It will collect Canada's documentary heritage by purchase, by agreement with other levels of government, legal deposit, collections of master copies of recordings and the transfer of Government of Canada records. It will continue to provide coordination of federal libraries and facilitate information management by government institutions.

Debate suspended.

BUSINESS OF THE SENATE

The Hon. the Speaker: I am sorry to interrupt the Honourable Senator Carstairs, but, it being 3 o'clock, pursuant to the order adopted by the Senate on October 29, 2003, I must interrupt the proceedings for the purpose of putting the question on the motion in amendment of the Honourable Senator Kinsella to Bill C-25.

The bell to call in the senators will be sounded for 30 minutes. The vote will take place at 3:30 p.m.

Call in the senators.

• (1530)

PUBLIC SERVICE MODERNIZATION BILL

THIRD READING— MOTION IN AMENDMENT NEGATIVED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts.

On the motion in amendment of the Honourable Senator Kinsella, seconded by the Honourable Senator Atkins, that the Bill be not now read a third time but that it be amended

(a) in clause 2

(i) on page 8, by replacing lines 27 to 32 with the following:

"include, among other things, harassment in the workplace.", and

(ii) on page 99, by adding after line 8, the following:

"PART 2.1

PROTECTION OF WHISTLEBLOWERS

Definitions

238.1 The following definitions apply in this Part.

"Commissioner" means the commissioner of the Public Service Commission who has been designated as Public Interest Commissioner under section 238.3.

"employee" has the same meaning as in Part 2.

"law in force in Canada" means a provision of an Act of Parliament or of the legislature of a province or an instrument issued under the authority of such an Act that is in force at the relevant time.

"minister" means a member of the Queens Privy Council for Canada who holds office as a minister of the Crown.

"wrongful act or omission" means an act or omission that is:

(a) an offence against a law in force in Canada;

(b) likely to cause a significant waste of public money;

(c) likely to endanger public health or safety or the environment;

(d) a significant breach of an established public policy or of a directive in the written record of the public service; or

(e) one of gross mismanagement or an abuse of authority.

Purpose

Purpose

238.2 The purpose of this Part is

(a) to provide for the education of persons working in the public service on ethical practices in the workplace and the promotion of the observance of these practices;

(b) to protect the public interest by providing a means for employees of the public service to make allegations, in confidence, of wrongful acts or omissions in the workplace, to an independent Commissioner who will investigate them and seek to have the situation dealt with, and who will report to Parliament in respect of problems that are confirmed but have not been dealt with; and

(c) to protect employees of the public service from retaliation for having made or for proposing to make, in good faith and on the basis of reasonable belief, allegations of wrongdoing in the workplace.

Public Interest Commissioner

Designation

238.3.(1) The Governor in Council shall designate one of the commissioners of the Public Service Commission to serve as Public Interest Commissioner.

Part of role of Commission

(2) The role of Public Interest Commissioner is a part of the function of the Public Service Commission.

Powers

(3) The Commissioner may exercise the powers of office of a commissioner of the Public Service Commission for the purposes of this Part.

Information made public

238.4 (1) Subject to section 238.9, the Commissioner may make public any information that comes to the attention of the Commissioner as a result of the performance or exercise of the Commissioner's duties or powers under this Part if, in the Commissioner's opinion, it is in the public interest to do so.

Disclosure of necessary information

(2) The Commissioner may disclose, or may authorize any person acting on behalf or under the direction of the Commissioner to disclose, information that, in the Commissioner's opinion, is necessary to

- (a) conduct an investigation under this Part; or
- (b) establish the grounds for findings or recommendations contained in any report made under this Part.

Disclosure in the course of proceedings

(3) The Commissioner may disclose, or may authorize any person acting on behalf or under the direction of the Commissioner to disclose, information necessary to assist

- (a) a prosecution for an offence under section 238.20; or
- (b) a prosecution for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made under this Part.

Disclosure of offence

(4) The Commissioner may disclose to the Attorney General of Canada or of a province, as the case may be, information relating to the commission of an offence against any law in force in Canada that comes to the attention of the Commissioner as a result of the performance or exercise of the Commissioner's duties or powers under this Part if, in the Commissioner's opinion, there is evidence of an offence.

Not competent witness

238.5 The Commissioner or person acting on behalf or under the direction of the Commissioner is not a competent witness in respect of any matter that comes to their knowledge as a result of the performance or exercise of the Commissioner's duties or powers under this Part in any proceeding other than

- (a) a prosecution for an offence under section 238.20; or
- (b) a prosecution for an offence under section 131 of the *Criminal Code* (perjury) in respect of a statement made under this Part.

Protection of Commissioner

238.6 (1) No criminal or civil proceedings lie against the Commissioner, or against any person acting on behalf or under the direction of the Commissioner, for anything done, reported or said in good faith as a result of the performance or exercise or purported performance or exercise of the Commissioner's duties or powers under this Part.

Libel or slander

- (2) For the purposes of any law relating to libel or slander,
 - (a) anything said, any information supplied or any record or thing produced in good faith and on the basis of reasonable belief in the course of an investigation carried out by or on behalf of the Commissioner under this Part is privileged; and
 - (b) any report made in good faith by the Commissioner under this Part and any fair and accurate account of the report made in good faith for the purpose of news reporting is privileged.

Education

Dissemination

238.7 The Commissioner shall promote ethical practices in the public service and a positive environment for giving notice of wrongdoing, by disseminating knowledge of this Part and information about its purposes and processes and by such other means as seem fit to the Commissioner.

Notice of Wrongful Act or Omission

Notice by employee

238.8 (1) An employee who has reasonable grounds to believe that another person working for the public service or in the public service workplace has committed or intends to commit a wrongful act or omission

(a) may file with the Commissioner a written notice of allegation; and

(b) may request that their identity be kept confidential with respect to the notice.

Form and content

(2) A notice under subsection (1) shall identify

(a) the employee making the allegation, and be signed by that person;

(b) the person against whom the allegation is being made; and

(c) the grounds on which the employee believes that the act or omission is wrongful and has been or will be committed, giving the particulars that are known to the employee and the reasons and the grounds on which the employee believes the particulars to be true.

No breach of oath

(3) A notice by an employee to the Commissioner under subsection (1), given in good faith and on the basis of reasonable belief, is not a breach of any oath of office or loyalty or secrecy taken by the employee and, subject to subsection (4), is not a breach of duty.

Solicitor-client privilege

(4) No employee, in giving notice under subsection (1), may violate any law in force in Canada or rule of law protecting privileged communications as between solicitor and client, unless the employee has reasonable grounds to believe there is a significant threat to public health or safety.

Waiver

(5) An employee who has made a request under paragraph (1)(b) may waive the request or any resulting right to confidentiality, in writing, at any time.

Rejected notice

(6) Where the Commissioner is not able or willing to give an assurance of confidentiality in response to a request made under paragraph (1)(b), the Commissioner may reject the notice and take no further action on it, but shall keep it confidential.

Confidentiality

238.9 Subject to subsection 238.11(5) and any other obligation of the Commissioner under this Part or any law in force in Canada, the Commissioner shall keep confidential the identity of an employee who has filed a notice with the Commissioner under subsection 238.8(1) and to whom the Commissioner has given an assurance that, subject to this Part, their identity will be kept confidential.

Initial review

238.10 On receiving a notice under subsection 238.8(1), the Commissioner shall review it, may ask the employee for further information and may make such further inquiries as, in the opinion of the Commissioner, may be necessary.

Rejected notices

238.11 (1) The Commissioner shall reject and take no further action on a notice given under subsection 238.8(1), if the Commissioner makes a preliminary determination that the notice

(a) is trivial, frivolous or vexatious;

(b) fails to allege or give adequate particulars of a wrongful act or omission;

(c) breaches subsection 238.8(4); or

(d) was not given in good faith or on the basis of reasonable belief.

False statements

(2) The Commissioner may determine that a notice that contains a statement that the employee knew to be false or misleading at the time it was made was not given in good faith.

Mistaken facts

(3) The Commissioner shall not determine that a notice was not given in good faith for the sole reason that it contains mistaken facts unless the Commissioner has grounds to believe that there was adequate opportunity for the employee to discover the mistake.

Report

(4) Where the Commissioner has made a determination under subsection (1), the Commissioner shall, in writing and on a timely basis, advise the employee who gave notice under subsection 238.8(1) of that determination.

Report to official and minister

(5) Where the Commissioner determines under subsection (1) that a notice was given in breach of subsection 238.8(4) or was not given in good faith and on the basis of reasonable belief, the Commissioner may advise

(a) the person against whom the allegation was made, and

(b) the minister responsible for the employee who gave the notice of the matters alleged and the identity of the employee.

Valid notice

238.12 (1) The Commissioner shall accept a notice given under subsection 238.8(1) where the Commissioner determines that the notice

(a) is not trivial, frivolous or vexatious;

(b) alleges and gives adequate particulars of a wrongful act or omission;

(c) does not breach subsection 238.8(4); and

(d) was given in good faith and on the basis of reasonable belief.

Report to employee

(2) Where the Commissioner has made a determination under subsection (1), the Commissioner shall, in writing and on a timely basis, advise the employee who gave notice under subsection 238.8(1) of that determination.

Investigation and Report

Investigation

238.13 (1) The Commissioner shall investigate a notice accepted under section 238.12, and, subject to subsection (2), shall prepare a written report of the Commissioner's findings and recommendations.

Report not required

(2) The Commissioner is not required to prepare a report if satisfied that

(a) the employee ought to first exhaust other procedures available to the employee;

(b) the matter could more appropriately be dealt with, initially or completely, by means of a procedure provided for under a law in force in Canada other than this Part; or

(c) the length of time that has elapsed between the time the wrongful act or omission that is the subject-matter of the notice occurred and the date when the notice was filed is such that a report would not serve a useful purpose.

Report to employee

(3) Where the Commissioner has made a determination under subsection (2), the Commissioner shall, in writing and on a timely basis, advise the employee who gave notice under subsection 238.8(1) of that determination.

Confidential information

(4) Information related to an investigation is confidential and shall not be disclosed, except in accordance with this Part.

Report to minister

(5) The Commissioner shall provide the minister responsible for the employee against whom an allegation has been made, on a timely basis and in no case later than one year after the Commissioner receives the notice, with a copy of the report made under subsection (1).

Minister's response

238.14 (1) A minister who receives a report under subsection 238.13(5) shall consider the matter and respond to the Commissioner.

Content of response

(2) The response of a minister under subsection (1) shall specify the action the minister has taken or proposes to take to deal with the Commissioner's report, or that the minister proposes to take no action.

Further responses

(3) A minister who, for the purposes of this section, specifies action proposed to be taken shall give such further responses as are requested by the Commissioner until such time as the minister advises that the matter has been dealt with.

Emergency public report

238.15 (1) The Commissioner may require the President of the Treasury Board to cause an emergency report prepared by the Commissioner to be laid before both Houses of Parliament on the next day that the House sits if, in the Commissioner's opinion, it is in the public interest to do so.

Content of report

(2) A report prepared by the Commissioner for the purposes of subsection (1) shall describe the substance of a report made to a minister under subsection 238.13(5) and the minister's response or lack thereof under section 238.14.

Annual report

238.16 (1) The Public Service Commission shall include in the annual report to Parliament made pursuant to section 23 of the *Public Service Employment Act* a statement of activity under this Act prepared by the Commissioner that includes

- (a) a description of the Commissioner's activities under section 238.7;
- (b) the number of notices received pursuant to section 238.8;
- (c) the number of notices rejected pursuant to sections 238.8 and 238.11
- (d) the number of notices accepted pursuant to section 238.12;
- (e) the number of accepted notices that are still under investigation pursuant to subsection 238.13(1);
- (f) the number of accepted notices that were reported to ministers pursuant to subsection 238.13(5);
- (g) the number of reports to ministers pursuant to subsection 238.13(5) in respect of which action satisfactory to the Commissioner has been taken;

(h) the number of reports to ministers pursuant to subsection 238.13(5) in respect of which action satisfactory to the Commissioner has not been taken;

(i) an abstract of the substance of all reports to ministers pursuant to subsection 238.13(5) and the responses of ministers pursuant to section 238.14; and

(j) where the Commissioner is of the opinion that the public interest would be best served, the substance of an individual report made to a minister pursuant to subsection 238.13(5) and the response or lack thereof of a minister pursuant to section 238.14.

Annual report

(2) The Public Service Commission may include in the annual report to Parliament made pursuant to section 23 of the *Public Service Employment Act* an analysis of the administration and operation of this Part and any recommendations with respect to it.

Prohibitions

False information

238.17 (1) No person shall give false information to the Commissioner or to any person acting on behalf or under the direction of the Commissioner while the Commissioner or person is engaged in the performance or exercise of the Commissioner's duties or powers under this Part.

Bad faith

(2) No employee shall give a notice under subsection 238.8(1) in bad faith.

No disciplinary action

238.18 (1) No person shall take disciplinary action against an employee because

- (a) the employee, acting in good faith and on the basis of reasonable belief, has disclosed or stated an intention to disclose to the Commissioner that a person working for the public service or in the public service workplace has committed or intends to commit a wrongful act or omission;
- (b) the employee, acting in good faith and on the basis of reasonable belief, has refused or stated an intention to refuse to commit an act or omission the employee believes would be a wrongful act or omission under this Part;

(c) the employee, acting in good faith and on the basis of reasonable belief, has done or stated an intention of doing anything that is required to be done in order to comply with this Part; or

(d) the person believes that the employee will do anything referred to in paragraph (a), (b) or (c).

Definition

(2) In this section, “disciplinary action” means any action that adversely affects the employee or any term or condition of the employee’s employment or adversely affects the employee’s opportunity for future employment within or outside the public service, and includes:

- (a) harassment;
- (b) financial penalty;
- (c) affecting seniority;
- (d) suspension or dismissal;
- (e) denial of meaningful work or demotion;
- (f) denial of a benefit of employment;
- (g) refusing to give a reference; or
- (h) any other action that is disadvantageous to the employee.

Rebuttable presumption

(3) A person who takes disciplinary action against an employee within two years after the employee gives a notice to the Commissioner under subsection 238.8(1) shall be presumed, in the absence of a preponderance of evidence to the contrary, to have taken the disciplinary action against the employee contrary to subsection (1).

Disclosure prohibited

238.19 (1) Except as authorized by this Part or any other law in force in Canada, no person shall disclose to any other person the name of the employee who has given a notice under subsection 238.8(1) and has requested confidentiality under that subsection, or any other information the disclosure of which reveals the employee’s identity, which may include the existence or nature of a notice, without the employee’s consent.

Exception

(2) Subsection (1) does not apply where the notice was given in breach of subsection 238.8(4) or was not given in good faith and on the basis of reasonable belief.

Enforcement

Offences and punishment

238.20 A person who contravenes subsection 238.8(4), section 238.17, or subsection 238.18(1) or 238.19(1) is guilty of an offence and liable on summary conviction to a fine not exceeding \$10,000.

Employee Recourse

Recourse available

238.21 (1) An employee against whom disciplinary action is taken contrary to section 238.18 is entitled to use every recourse available to the employee under the law, including grievance proceedings provided for under an Act of Parliament or otherwise.

Recourse not lost

(2) An employee may seek recourse as described in subsection (1) whether or not proceedings based upon the same allegations of fact are or may be brought under section 238.20.

Benefit of presumption

(3) In any proceedings of a recourse referred to in subsection (1), the employee is entitled to the benefit of the presumption established in subsection 238.18(3).

Transitional

(4) Where grievance proceedings are current or pending on the coming into force of this Part, the proceedings shall be dealt with and disposed of as if this Part had not been enacted.”; and

(b) in clause 8 on page 108,

(i) by striking out lines 13 to 20, and

(ii) by relettering paragraphs 11.1(1)(i) and 11.1(1)(j) as paragraphs 11.1(1)(h) and 11.1(1)(i) and any cross references thereto accordingly; and

(c) in clause 88 on page 193, by adding after line 17, the following:

“88.1 Schedule II to the Act is amended by adding the following in alphabetical order:

Public Service Labour Relations Act
section 238.9, subsection 238.13(4), section 238.19

Loi sur les relations de travail dans la fonction publique
article 238.9, paragraphe 238.13(4), article 238.19.”.

Motion in amendment negatived on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	Kinsella
Beaudoin	LeBreton
Cochrane	Lynch-Staunton
Comeau	Oliver
Di Nino	Prud'homme
Doody	Robertson
Gustafson	Spivak
Johnson	Tkachuk—17
Keon	

NAYS
THE HONOURABLE SENATORS

Adams	Jaffer
Bacon	Joyal
Biron	Kroft
Bryden	Lapointe
Callbeck	Lavigne
Carstairs	Léger
Chalifoux	Losier-Cool
Chaput	Maheu
Christensen	Mahovlich
Cook	Massicotte
Cools	Merchant
Corbin	Milne
Cordy	Moore
Day	Morin
De Bané	Pearson
Downe	Pépin
Fairbairn	Phalen
Finnerty	Plamondon
Fitzpatrick	Poy
Fraser	Ringuette
Furey	Robichaud
Gauthier	Rompkey
Grafstein	Smith
Graham	Sparrow
Harb	Stollery
Hervieux-Payette	Trenholme Counsell—53
Hubleby	

ABSENTIONS
THE HONOURABLE SENATORS

Nil

LIBRARY AND ARCHIVES OF CANADA BILL

SECOND READING—DEBATE ADJOURNED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C., for the second reading of Bill C-36, to establish the Library and Archives of Canada, to amend the Copyright Act and to amend certain Acts in consequence.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I was addressing Bill C-36, to establish the Library and Archives of Canada and to amend the Copyright Act and to amend certain acts in consequence. I was talking about the merger of the library and the archives and I was describing some of the features of this new merger. I will continue.

At the same time, the new institution will also have a strengthened mandate to make known and more accessible our documentary heritage to all Canadians. In order to carry out this broader mandate, the new institution will be able to call upon the resources and all the expertise of the two original entities.

Just imagine the possibilities, honourable senators. Picture the horizons that will soon open up before us. Already we have some sense of the tremendous potential of Library and Archives of Canada. The two original bodies are already working closely together to serve Canadians through the new Canadian Genealogy Centre.

Working in partnership with the Department of Canadian Heritage and others, the Library and Archives of Canada launched this new Web site on genealogy and the history of families. As senators no doubt know, the Canadian Genealogy Centre is a one-stop shop providing physical and electronic access to genealogical resources in Canada. The centre offers genealogical content, services, advice, research tools and opportunities to work on-line on joint projects, all in both official languages.

Honourable senators, this initiative is an excellent example of how new technology can be used in innovative ways to increase people's access to information. That is a very promising development, and it is becoming increasingly clear that Canadians need easier access to knowledge and information, especially with regard to our heritage and culture. To a large extent, this is due to the evolution of information technology, which has whetted the appetite of Canadians for rapid access to information in all of its forms.

At the same time, technological advances also have a tremendous potential in areas such as storage, data management and documentary research, making it possible to create a cogent single point of access to our documentary heritage.

Thanks to the magic of the Internet, it is also easier to make our documentary heritage known to interested users in Canada and abroad.

On this issue, I should like to quote Mr. Roch Carrier, the National Librarian, who made this national statement about the National Library's Music Department:

In the past, we used to get 300 researchers coming in every year. Now that we are on-line, every month we receive 100,000 visitors.

Technological progress is also reshaping the field of document preservation. More accurate temperature control, a better understanding of the nature of materials, more sensitive monitors and other developments are helping to ensure that the most precious artifacts of our heritage are protected for future generations.

As a result, our documentary heritage is given a new lease on life and all Canadians gained improved access to a vast treasure trove of valuable information about themselves and their country. That is why this bill also includes provisions that will ensure that the new agency has the modern tools required to meet the information needs of Canadians in the 21st century. For example, the institution's traditional activities will be supplemented and reinforced by a new collection method; that is, by sampling the Internet and capturing a periodic reflection of the Canadian reality in this virtual world.

• (1540)

The goal is to capture a sample of our times and of this new medium, which is both ever-present and ethereal, where the look and feel of the most cutting-edge Web sites change as quickly as the technology allows. It is absolutely critical that Library and Archives Canada be allowed to take these snapshots of Internet content, which is accessible to the public without restriction, if it is to succeed in preserving for all future generations a record of the life we have led, the communications tools we have used and the technologies we have succeeded in creating.

While I am on the subject of this new institution having the right to copy samples from the Internet, it is important to stress that this new power will only apply to Internet content that is widely accessible to the general public and without any restriction. As well, it should be mentioned that the process of fixing on a permanent medium this ephemeral material for the purpose of preservation requires an exception under the Copyright Act. Therefore, Bill C-36 proposes the necessary consequential amendments to that act.

A further proposed amendment to the Copyright Act occurs as a result of the last major review of the Copyright Act, which took place in 1997. At that time, the government put an end to perpetual protection of unpublished work and brought unpublished works into line with the general term of protection for copyright in Canada. Since then, unpublished works have been given a protection of 50 years after the death of the author.

At the same time that this amendment was made, a five-year transitional period was introduced as a matter of courtesy to the estates of authors so their work would not fall into the public domain immediately. These provisions came into force on December 31, 1998. Unpublished works of authors who died more than 50 years before that date, i.e., before 1948, would therefore fall into the public domain on January 1, 2004. However, while the descendants of certain writers expressed concern about protecting their copyright, there were also a number of people, including academics, historians, archivists, genealogists and others, who look forward to seeing unpublished works enter the public domain.

The provisions found in this bill, which would extend the period of protection for an additional three years only, will allow sufficient time for this issue to receive proper attention. As a result, the legislation that is the focus of today's debate would extend protection for three years for the unpublished works of authors who died after December 31, 1929 and prior to January 1, 1949.

This bill will also make changes that benefit historians, archivists, genealogists and other stakeholders. Bill C-36 will do this by amending section 30.21 of the Copyright Act to remove the conditions that archival institutions must meet in order to make single copies of unpublished works. Such copies are used for the purposes of research and private study.

Section 30.21 currently states that a copy of an unpublished work deposited before October 1, 1997 can only be made if the archive is unable to locate a copyright owner. It also states that records must be kept of all copies made under this section. Honourable senators, as you can well imagine, this sort of record keeping adds a considerable burden to our archival facilities and the provisions contained in the Library and Archives of Canada Act would repeal this condition.

Canada's documentary heritage belongs to all of us, and it must be more accessible for all Canadians. These amendments are yet another example of the fact that Library and Archives Canada will have the mandate, the powers and the tools necessary to attain its goals.

Honourable senators, for all these reasons I am proud to add my voice to those of my colleagues who are supporting Bill C-38. Thanks to this initiative, our country will be able to give itself a new cultural agency, one that will reflect, interpret, celebrate and stimulate our national identity. I hope that all honourable senators will be able to support this worthwhile measure.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I have a question for the minister. The most contentious part of this bill is a proposed amendment to the Copyright Act. I hope that the minister will not allow this chamber to follow the sorry example of the House of Commons. The original amendments to the Copyright Act were discussed in committee and one in particular did not satisfy very many people. Suddenly, two days ago, in the House of Commons, according to their Hansard of October 28, the Government House leader announced that there had been an agreement between the House leaders, read out a new amendment to the Copyright Act, which is significantly different from the one that was in the bill tabled at the time, and simply asked for unanimous consent. The acting Speaker asked if there was unanimous consent to adopt the motion and honourable members agreed. There was no discussion and no warning at all that these major changes in the Copyright Act, which were already the subject of diverse opinion, would be tabled and adopted within the time it took to read them.

I would hope that the minister will not force another bill upon us, and that she will allow all the time needed to discuss this aspect of the bill with interested witnesses. Representations are already coming in. I am sure that the leader has received letters, and so forth. There is a great deal of unhappiness out there at how the House treated this bill. I plead with her that we not repeat that sorry example here.

Senator Carstairs: Honourable senators, as the honourable senator knows, a number of strange things happened to this bill on the way to its completion. There had apparently been an agreement similar to the one that we finally have in this bill. Somehow, that agreement was lost, and a new motion came in with a new clause, which caused some controversy.

My understanding is that there were meetings of the representatives of the political parties in the other place before this new amendment was tabled in the House, and there was unanimous consent from all parties to delete one part and add a new part. That is all the more reason for us to send this bill to committee and study it.

Only yesterday, in a spirit of great enthusiasm for a bill, there was discussion that we would not even send it to committee. We made the decision, which I think was wise, that even if it only went for one day, it should go to committee. That was the Westray bill, Bill C-45. I would certainly expect that we would send this bill to committee.

Senator Lynch-Staunton: I had forgotten about that first agreement — I think it was an agreement — that was changed without any consultation with some of those who were party to the agreement. I will repeat what happened in this case. House leaders, behind closed doors, agreed to substitute one amendment for another. None of the witnesses who had appeared before the committee were consulted. They found out about it only when they read the Hansard of the House the following day. That is deplorable, and I hope that the people involved are listening.

Hon. Serge Joyal: Honourable senators, I certainly concur in the objective of the bill, the merger of those two national institutions. My concern arises from the fact that two major institutions that are linked to the new body, the National Portrait Gallery and the new historical centre in Ottawa, are not mentioned in the bill. I have looked at the definitions of the bill. I have looked at clause 6 of the bill, which provides for an advisory council, but nowhere in the bill is there any mention of those two institutions that will become the window of the archives and library for Canadians, one of the key centres for access to information in relation to their history. Those institutions have been announced and I understand that a commission has been given to a Canadian firm of architects to prepare the plans for the portrait gallery.

I am happy to report to honourable senators that the Honourable Senator Grafstein and myself were at the origin of that project, and it was reported in the paper at that time.

[Senator Lynch-Staunton]

• (1550)

Could the Leader of the Government explain why those other two national institutions that will be linked to the National Archives of Canada and the National Library of Canada are not even mentioned in the bill?

Senator Carstairs: Honourable senators, I do not know why they are not mentioned. I can only assume that, for the purpose of legislation, it was not necessary for them to be mentioned. However, that is clearly an area that should be debated and discussed at the committee stage.

Senator Joyal: The honourable government leader will understand that the National Gallery of Canada, the National War Museum of Canada, the Canadian Museum of Civilization, the Canadian Museum of Aviation, the Canadian Museum of Nature, all find their existence recognized in the statute because they are considered permanent. They are part of the overall heritage of Canada, and they are part of the overall facilities that the Government of Canada wants to provide to Canadians.

Again, I do not assume that the government leader has the responsibility for that decision, but I am very surprised that those two very important institutions, essentially linked again to the National Archives of Canada and the National Library of Canada, do not find recognition in that bill. In fact, I was expecting to find them in this bill, considering that the government has already announced a budget, which is already in implementation and so forth, so it is not only in the air as a dream but it is a reality. I could not be more supportive of that reality, but I am surprised not to find anything in the bill that mentions them, even in the definition of government institutions. They are not even there.

Senator Carstairs: As I indicated in my earlier answer, honourable senators, that is clearly an area of study for the committee.

On motion of Senator Kinsella, debate adjourned.

[Translation]

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, if we were to return to the order proposed in the Order Paper, we would be at Item No. 2. We have had the vote on the motion to amend and I think it would be appropriate to deal with this item.

[English]

POINT OF ORDER

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): I rise on a point of order. Honourable senators, this is a very serious matter. It speaks to the integrity not only of the chamber and the decisions of this chamber, but it also speaks to the integrity of our committee system.

In making this point of order I will be referring to rules 1, 48, 58, 85 and 95 of the *Rules of the Senate of Canada*. I shall also be drawing the attention of honourable senators and His Honour to rule 1(2) that reminds us that the *Rules of the Senate of Canada* shall in all cases be interpreted as having priority over any practice or custom, which speaks to the fact that practice and custom is a critically important part of our process and that, unless there is an explicit rule to trump a practice, the custom must be respected.

In accordance with rule 85(1), the Senate Committee on Selection is struck at the commencement of each session. The duty of that Committee of Selection is to nominate the senators to serve on the several select committees in accordance with rule 85(1)(b). The Committee of Selection did so with reference to the order of this house that was adopted and that has created all of the standing committees of the Senate that are currently in act.

However, due to the recommendation of the report of the Selection Committee, which contains the names of the senators whom the Selection Committee nominates, it is understood that the duty of those senators — if their nomination is confirmed by the Senate, and that confirmation is an order of the house — in turn, is to serve on the select committees to which the Senate has ordered that they be the senators sitting on a given committees.

The Committee of Selection itself does not present a report in any haphazard way. It goes through a series of steps and, indeed, there are discussions between the various parties in the Senate. There are long discussions among the members of the various parties in the house in order to determine the areas of interest of the given senators who eventually will be nominated, but also the areas of special expertise that the given senators bring to the work of a committee.

A very important factor that guides the Committee of Selection is the schedule of meeting times for the various committees. In order to avoid potential conflicts in timetabling, the Committee of Selection takes into consideration the schedule of meetings of the various committees. One of the more difficult aspects of the work of the Committee of Selection is to choose from among very capable senators those who would be the ideal choices on more than one of a number of committees that meet at the same time.

For example, the Committee of Selection would avoid putting a senator on both the Standing Senate Committee on Social Affairs, Science and Technology as well as the Standing Senate Committee on Legal and Constitutional Affairs. Why? Because, in part, both of these committees have their regular time slots on Wednesday afternoons and Thursday mornings. Committees are expected to meet during the specified time slots allocated. To do otherwise may well provide insuperable obstacles or scheduling conflicts for the members of the committee and obviate the opportunity for the given senator to do his or her duty, which is what flows from the order of the house that has confirmed the senator sitting on a given committee.

This is the problem a number of senators on this side found they were facing this morning. The chair of the Standing Committee on Rules, Procedures and the Rights of Parliament, together with the other Liberal members of the steering committee, and over the vigorous objections of the deputy chair of that committee, convened a meeting of the committee this morning outside of its normal scheduled times and outside of the direct indication by the whip of the official opposition that that time, which is not the time slot for that committee, would be particularly harmful to the rights and privileges of our senators who have a right to be sitting on the committee to which an order has been adopted. In this case, this morning some senators were sitting on the Standing Senate Committee on Legal and Constitutional Affairs, while others were on the Standing Committee on Internal Economy, Budgets and Administration, and they were sitting at their regularly scheduled times. Therefore they were unable to attend an illegally scheduled meeting of the Standing Senate Committee on Rules, Procedures and the Rights of Parliament. It is disappointing that a committee with a name like "Rules, Procedures and Rights of Parliament" would take an action that has so fundamentally affected the rights of a senator. The usual procedure has been the custom in this place long before I arrived here 13 years ago. That custom and practice is respected, I suggest, in every legislative assembly that honourable senators would be able to survey.

• (1600)

That meeting of the Rules Committee was held this morning at 10 a.m. The committee also heard from witnesses on a bill, the order of reference for which was given to that committee to examine that given piece of legislation. As honourable senators know, that piece of legislation is Bill C-34 and, once again ironically, it is called the ethics bill.

Senator Oliver, our lead critic on the bill, is also the Chairman of the Standing Senate Committee on Agriculture and Forestry. What was his committee doing? The Honourable Senator Oliver was busy chairing another Senate standing committee. He had a duty to be at the Agriculture Committee meeting. That committee was hearing testimony on the subject of bovine spongiform encephalopathy, or BSE.

Because of this prior important commitment — more than commitment, even duty — Senator Oliver was not able to attend the surprise, illegal meeting of the Standing Committee on Rules, Procedures and the Rights of Parliament to hear a very important witness testify on Bill C-34.

Senator Beaudoin is the Deputy Chair of the Standing Senate Committee on Legal and Constitutional Affairs. His obligation is to be at the meeting of the Legal Committee which meets, according to the agreed-upon time schedule for committees, at 10 o'clock on Thursday mornings. Senator Andreychuk is also a member of that committee.

How do these three senators feel? These are three of our best senators; three of our most assiduous senators; three senators who bring, from the viewpoint of the analysis of the opposition, a special reflection which is appropriate in our parliamentary chamber, where the government sits on one side and the opposition sits on the other.

Those senators had duties to attend those meetings. They were called upon to attend, by an order of the house that elected them to serve on various committees, the Rules Committee.

Senator Stratton and Senator Robertson both sit on the Standing Committee on Internal Economy, Budgets and Administration. What is its regular scheduled time for meeting? Its regular slot is Thursday morning. That committee convened in its regular time slot to deal with budgetary matters requiring consideration.

Honourable senators, that is the entire complement of the opposition members presently sitting on the Standing Committee on Rules, Procedures and the Rights of Parliament. All five of our members had prior duties pursuant to an order of this house to attend meetings of standing committees of this chamber. All of those meetings, which they had a duty to attend, were properly convened in their allotted time slots.

However, and again ironically, the Standing Committee on Rules, Procedures and the Rights of Parliament, notwithstanding its title, intentionally met outside its allotted time slot. That extraordinary scheduling was done without the agreement of the committee as a whole. Indeed, the transcripts of the committee do not even show that the matter was discussed in the committee. I am certain that members of the Standing Committee on Rules, Procedures and the Rights of Parliament on the government side faced similar conflicts. For example, I hope we will have read into the record the report that is coming from the Legal Affairs Committee today. Senator Joyal, who is a member of the Legal Affairs Committee, made an intervention at that committee pointing out the impossible situation he was placed in because of the illegally convened Rules Committee meeting. He wanted to follow the very important legislation in that committee, but he also wanted to participate in a critically important piece of legislation affecting the mining families of Nova Scotia.

The difficulty is that the situation compels senators to choose which obligation they will fulfil. I refer His Honour to rule 85(3), which states:

Subject to subsection (4) below, the Senators nominated under this rule shall, when their appointments are confirmed by the Senate, serve for the duration of the session for which they are appointed.

Subsection (4) allows for changes to be made. The purpose is to allow for situations where senators are not available due to illness or when they are away.

We will leave for another time a practice of the leadership on either side which I find unparliamentary: attempting to substitute senators who have been elected upon the nomination of the Selection Committee to serve on a given committee and removing others — against their will, some might suggest. The leadership on either side has the authority to make substitutions if they do not like the way a given senator is going to reflect and then vote on a matter before that committee. That kind of dictatorship is not what parliamentary tradition is all about.

Honourable senators, rules 85(3) and 85(4) allow for changes. His Honour will want to look at those. It is so important to underscore the duty that is met so honourably by all honourable senators to attend meetings of the committees on which they serve. The work of our committees is one of the hallmarks of this important chamber in our great country. We all recognize the importance of our committee work, as do Canadians. Our senators respond to that duty with a positive attitude and not reluctantly.

All in this house recognize that there will be occasions when other business compels senators to be absent. I believe rule 85(4) provides for those situations. However, when a committee takes steps that literally make it physically impossible for a senator to fulfil that duty, we have a serious problem that undermines the whole chamber.

• (1610)

Honourable senators, the Standing Committee on Rules, Procedures and the Rights of Parliament chose to continue its hearings of witnesses in the absence of members of the opposition party. I wish to place on the record the fact that this was not a boycott. It could not be a boycott, because we had senators who had to be in attendance at the Legal Committee and the other committees that I mentioned.

It was the desire of all of our members on the committee to attend the meetings on the subject of Bill C-34. That is on the record. Both Senator Andreychuk and Senator Beaudoin were present at the beginning of the meeting to express their concern about the scheduling problem. However, they were denied the opportunity to be present and question the witnesses due to the irregular timing of the meeting — deliberately held at a time when the chair knew that it would generate scheduling conflicts for members of the committee and without their concurrence.

Honourable senators, it is frequently suggested that Senate committees are masters of their own destinies and that this is not a matter to be raised in the chamber. I raise it because an order of this house was made in response to the report that this house received and adopted — and, I might say, it was unanimously adopted — from the Selection Committee. It is a matter of direct concern for the chamber as a whole.

It seems to me that, where a committee wishes to sit outside the times allocated to it, the members of the committee ought, as a bare minimum, to first be consulted. Furthermore, honourable senators, I would draw your attention to the rule which applies when the Senate stands adjourned. Rule 95(1) provides that:

95(1) A select committee may adjourn from time to time and, by order of the Senate, from place to place.

This rule, you will note, does not contain any limitation on those times. Our committees may be masters of their own destinies, but they are creatures of the Senate itself. Since the adjournment rule for committees is silent as to the timing of the next meeting, we should look to the process in place for the chamber itself for guidance. Our rules provide clearly that the rules in committee will be guided by the rules of the chamber.

Rule 58(1) (h) states that one day's notice is required for a motion. It states:

58(1)(h) for an adjournment of the Senate, except the ordinary daily adjournment as provided in rule 6(1) or (2) or under rules 15 and 48(1);

Notice, of course, must be given in the chamber. The chamber, therefore, once again, has a direct interest and direct oversight of the comportment of our committees. By analogy, notice of a meeting of a committee to sit outside its assigned time slot would be, clearly, required. It follows, *mutatis mutandis*, that notice would have to be given during the course of a committee meeting.

Nothing of this nature was done. It has been a most unfortunate attempt to breach the responsibilities, indeed, the rights and, I would suggest, the privileges not only of the honourable senators who sit on the respective committees involved, but also of an order of this house.

Honourable senators, I think that, as a remedy, this house should not only take this under consideration, but also find a way to correct the wrong that has been perpetrated so that the witness, who appeared at an illegally constituted meeting, will be recalled, and that all members of the committee will be given the opportunity to hear from that witness and, more important, to adduce evidence by questioning that witness.

Some Hon. Senators: Hear, hear!

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, with the greatest respect to the senators opposite and, in particular, Senator Kinsella, there is no point of order.

First, if there were a legitimate point of order, it should have been raised at the first possible opportunity. That would have been immediately as we went to Orders of the Day this afternoon. It was not.

Senator Oliver: Senator Kinsella was not here.

Senator Kinsella: Who cares?

Senator Robichaud: We care. I care.

Senator Kinsella: They did not care about our members not being in committee.

Senator Lynch-Staunton: Your fault.

Senator Carstairs: We have heard a great deal about rule 85(1). Honourable senators, that rule does apply to the Selection Committee. The Committee of Selection selected 15 names of senators to be members of the Rules Committee. Those names have changed a number of times. As late as October 17, less than eight days ago, neither Senator Oliver nor Senator Beaudoin was listed as a member of the Rules Committee. Senator Andreychuk was listed as such, but the other two senators were not. If they maintain — and I assume they are correct — that they are now members of that committee, then that change was made as recently as six or seven days ago.

Senator Lynch-Staunton: What is the point?

Senator Carstairs: As to the process that was followed in committee, it appears that the committee spent 50 minutes today debating procedure before it heard from the witness, who was there waiting to be heard. It would seem to me that the honourable senators who are now indicating that they had to move on to another meeting because their meeting started at 10:45 a.m. could have easily heard from that witness from 10:00 a.m. to 10:45 a.m. and then moved on to debating their procedure. However, they chose not to do so.

Senator Lynch-Staunton: One meeting started at 8:30 a.m.

Senator Carstairs: Senator Oliver, it was indicated, was busy at the Agriculture Committee, but my information — and I stand to be corrected — is that the Agriculture Committee ended at 9:55 a.m., five minutes before the Rules Committee began.

Some senators said that they were required to attend the Energy Committee, and it is my understanding that that committee meeting ended at 9:50 a.m. I also understand that Internal Economy ended at 11:00 a.m. The committee that heard this particular witness and that debating the various views began at 10 a.m. and went on to just before the Senate commenced.

There are no rules of this chamber that dictate the times when a meeting shall be held, with one exception: We do not permit, unlike they do in the other place, committees to sit while the Senate is sitting, unless there is unanimous consent.

We had a situation today where, yes, a great number of committees were sitting. Honourable senators, that is common in the Senate. It is common on Tuesday. It is common on Wednesday. It is common on Thursday. It is common because the Senate frequently is not here as a body on Mondays and Fridays, and so the prevailing desire of most senators is not to have committees sit on Mondays and Fridays. Frankly, we changed the rules a couple of years ago to add a few committees, on the provision that they would sit on Mondays. That certainly is the situation with the new Official Languages Committee, the Standing Senate Committee on National Security and Defence and the Standing Senate Committee on Human Rights. Members of those committees come in on Mondays. It is certainly not uncommon now for many senators to be gathered here on Mondays to attend to their committee duties.

It was certainly clear to my caucus members that we were in a period of time where being here five days a week was going to be common. Therefore, because we could not sit at the same time as the committees would sit, there will be an adjournment motion today to not have the Senate sit tomorrow but to indeed have this committee sit so that they can continue their very thoughtful and considered deliberation.

• (1620)

The other side, of course, would indicate that they have small numbers and they have to be accommodated at every possible opportunity. We have, on this side, done our very best to do that so that they be accommodated. Whenever it is possible, we try not to add to the conflicts that already exist with many members on many committees.

While we try to accommodate that when we first start with a meeting of the Committee of Selection, and we try on both sides to have as few conflicts as possible, changes are made on a very rapid basis, some days before the ink is dry on the report of the Committee of Selection. Those changes take place because that is the nature of the parliamentary system, as the honourable senator said. We have senators who have other commitments. We have senators who are travelling on one Senate committee when their other committee is meeting in Ottawa. Clearly, on those occasions, we are forced to change the membership of that committee.

I would argue, honourable senators, that there is no point of order here. The other side clearly does not like what happened. I can respect that they do not like it but, frankly, that does not give them a point of order.

Hon. John Lynch-Staunton (Leader of the Opposition): If the point of order is to be determined strictly on the narrowness of the rules or the interpretation of the rules alone, perhaps Senator Carstairs has an argument. I would hope, though, that when it comes to the event which the point of order is all about, some customs and traditions of this place will also be taken into account.

We have never asked for special accommodations. We have asked for basic consideration. We have never complained in this

chamber about the time slots that presently exist. We have always respected them, and tried to have our members at the committees knowing ahead of time when those committees are meeting. Senator Oliver was put on the Rules Committee to replace Senator Murray. He is an ideal choice for all of us because he is co-author of the Milliken-Oliver report. In any event, he has as much knowledge of the issue of ethics as anyone in this room, so it is only natural that he serve on that committee.

Therefore, I find it insulting for him to be told, "Okay, when you are through with the Agriculture Committee, wander in to the Rules Committee. They may already have heard one witness or two, but that is no matter. Your obligation is to go there." Senator Oliver can reply for himself, but if I were he, I would say, "Look, why did you not ask me a few days ago if I could attend a committee meeting at a time outside its ordinary time slot?"

That is basically what we are saying here. None of the committee members, except for Senator Andreychuk, as a member of the steering committee, was consulted — not consulted about the Thursday meeting, and not consulted about the Friday meeting. If we had been consulted the week before on what the plan of the government was through the chair of the committee regarding scheduling of hearings on this bill, we would have said either no or yes at the time, but at least we could not be faulted for not having been alerted to the new schedule of sittings.

What we resent, and perhaps it is allowed by the rules, is that a committee chair, with the support of one member of the steering committee, can unilaterally disrupt the schedule of the committee and have it sit at a time of his or her choosing. Maybe that is done and can be done, but surely basic courtesy and our custom — and, it is to be hoped, respect for each other — should not allow that to be done.

Hon. Lorna Milne: Your Honour, Senator Kinsella is quite right when he says that committees in this place have always been considered the masters of their own fate. During the organizational meeting of the Rules Committee, the committee itself gave the steering committee specific authority to schedule meetings of the committee. I quote from the minutes of our proceedings:

That the subcommittee be empowered to make decisions on behalf of the committee with respect to its agenda, to invite witnesses and schedule hearings;

There is no mention in the minutes of the organizational meeting that restricts the times of those meetings to the spots in the schedule.

Senator Kinsella is also correct in that I did not, at the end of our regular meeting on Wednesday, announce when our next meeting would be. A senator at that point was still speaking in committee, and 1:30 arrived and I had to bring the gavel down to end the meeting. Without this type of notification, committees are always considered to be adjourned to the call of the chair.

A meeting of the steering committee, I point out, was held on Tuesday of this week, and it was agreed by a majority vote — not a unanimous vote, but a majority vote — to call the meeting this morning at 10 a.m., and I believe I properly called that meeting. We had a quorum in the committee when we heard the witnesses this morning. No opposition members are required to be there for a quorum within that committee. A quorum consists of four people, and rule 86(1)(f) states clearly that our quorum is four. I believe that the committee was properly constituted this morning, and there is no point of order.

Senator Lynch-Staunton: It is all there. So much for custom, so much for tradition, so much for courtesy, and so much for democracy. Keep on sitting without the opposition. Ram the bill through and wonder why and who prompted you to do it.

Hon. Anne C. Cools: Honourable senators, I was listening carefully as Senator Kinsella first raised this point of order. It took him a few minutes to develop it and a few minutes for him to explain to the chamber exactly where he was going with this point of order.

I would submit that Senator Kinsella has not only made a valid point of order, but he has also made an important point of order. I listened very carefully, and there are a few issues and questions that I intend to answer, but his point of order is very important.

Before I go into the substance of what I want to say, I want to answer two points, one made by Senator Milne and the second one made by Senator Carstairs. The first point Senator Carstairs made to which I wish to respond is she said that points of order must be raised at the earliest opportunity. That is not the case. Points of order can be raised whenever the raiser sees it as relevant or important. The terminology “earliest opportunity” comes from the sections of the rules respecting the raising of questions of privilege under the *prima facie* rules with reference to the Speaker, so there is no time constraint on points of order. That is the first point.

The second point that I would like to make is on something that Senator Milne just raised. She talked about the powers or the rights of the subcommittee on agenda to schedule hearings and so on. I would make the point that any powers that the subcommittee has to schedule hearings cannot possibly intrude or entrench on any orders of the Senate. The powers that are given to the subcommittee on agenda, or whatever it is called, expect that those steering committees, which is what we call them in the lexicon, will conform to all the other rules of the system. They have absolutely no power to override any orders of the Senate.

That brings me now to the substance of my intervention. Honourable senators, this whole business of membership changes on committees and the arbitrary setting of committee meetings needs some very serious examination — for another day; not today. For the moment, I wish to explore the point that Senator

Kinsella raised, which is with respect to rule 85(4), which has to do with changes in membership on committees. That rule would lead one to expect that any change in membership would be made with the agreement of that member. It is not a tool of coercion.

• (1630)

I would also state, honourable senators, that by order of this Senate, members of committees are appointed for the duration of sessions. There is no question about that. Some may not choose to abide by that order, but, make no mistake, that is an order of the Senate.

Returning to my central point, we must understand that the Senate, like any other chamber or any other House of Parliament, can only operate through its orders and its resolutions. They are the only two ways it has of exercising its will.

The rules in respect of the Committee of Selection exist to allow the Senate to make decisions about the composition of its committees. Honourable senators, once those decisions are made and voted on in this chamber, they become an order of the Senate. I would submit to honourable senators here that all members of the Senate are expected to conform to and to obey those orders.

I would also submit that no chairman of any committee, or any steering committee of any committee, has any power to overrule that particular order. Any committee chairman who believes thus is sadly mistaken and seriously erring in his or her ways. Our system is supposed to condemn arbitrariness, not to support arbitrariness.

Therefore, honourable senators, my understanding has always been that, if a committee wanted to meet outside of its allotted time, it could only do so by a unanimous decision of the committee members. If that were not the case, you would have a situation where a decision would be made, some members of the committee would not agree to it, and so they could just go out and set up another committee meeting and overturn that decision.

The rules are intended to prevent and to protect against arbitrariness. I submit to you that no committee has the power just to ignore an order of the Senate and to step outside of the framework and the system and go off and set up a committee meeting that many members cannot attend. To do so would be a very serious breach, because what the committee is doing, in point of fact, is asking or ordering honourable senators to disobey the larger order of the Senate. That is improper.

Honourable senators, this has been done many times. I do not believe there is any trickery involved in this instance, but I can tell you that I have been around here for a while I have seen lots of tricks, some not so desirable.

Honourable senators, no committee chair can ask any senator to disobey an order of the chamber and attend a committee meeting.

I would remind you of the attendance requirements. I just happen to have a copy of one of our writs of summons which is read when new senators are called which, in part, states:

AND WE do command you that all difficulties and excuses whatsoever laying aside, you be and appear, for the purposes aforesaid, in the Senate of Canada at all times whensoever and wheresoever Our Parliament may be in Canada convoked and holden, and this you are in no wise to omit.

No chair of a committee can overcome that order.

Honourable senators, the first remedy for what happened this morning is for this chamber to declare that that meeting was improperly constituted, and because it was improperly constituted, the proceedings are de facto void. The next remedy would be for the committee to convene in its proper allotted time a meeting of the senators who are the members of the committee to decide how to move forward from there, and, finally, for the committee in question to admit that it had no authority to conduct itself in the way it did.

Many honourable senators may think that these are just minor, minute, or arcane, trivial points. I can tell you that this goes to the heart of what constitutes a proceeding in Parliament, and what constitutes a proper process in Parliament.

Thank you, honourable senators.

Hon. Serge Joyal: Honourable senators, I will be brief. I happen to be a permanent member of the Standing Committee on Rules, Procedures and the Rights of Parliament, and I take that job very seriously. In fact, I have attended each and every meeting in the last five years from beginning to end. I have questioned the witnesses and debated with my colleagues around the table in each and every committee.

I also happen to be a permanent member of the Standing Senate Committee on Legal and Constitutional Affairs and have been for the last five years. I have attended each and every meeting of that committee and questioned witnesses and debated with my colleagues.

I have tried, under my commission and oath of office, to give my advice and my consent to legislation. Sometimes my colleagues to share my views, and I am happy with the result. Sometimes they do not, and I expect that at a further time, I will have an opportunity to continue the debate with them. I have always tried to be very respectful of the status of each and every senator.

This morning, I found myself in the untenable position of attending a sitting of the Standing Committee on Rules, Procedures and the Rights of Parliament on an issue in which I have been taking a great interest personally and, at the same time,

of being called to the Standing Senate Committee on Legal and Constitutional Affairs, not to study an issue but to vote, which is the utmost decision each one of us can take. I was caught in that difficult and, as I say, untenable situation.

To me, honourable senators, it is unethical. It is unethical as a parliamentarian to be shifted from one room to the other. I do not want to be considered a pawn on a chess board. When I arrive at a committee meeting, I want to have the time to read a bill, consult, bring some documents and contribute. I do not come empty handed. I come with some documents, because I expect my colleagues will expect to have a full debate.

I would not be on my feet, now, had the meeting been called for 9 a.m. to adjourn at 10:45 a.m. I would have attended the meeting of the Rules, Committee and then, at 10:45 a.m. I would have moved Legal and Constitutional Affairs Committee.

However, I found myself in the untenable position whereby, between the two witnesses that the Rules Committee was hearing this morning, I rushed to the Legal and Constitutional Affairs Committee to raise a point of order and to explain to my colleagues why I was not there — because I was not sick in the hospital or at home, and I was not travelling. In fact, honourable senators, I never travel when this house is sitting and not with a committee, for obvious reasons, because my utmost duty is to express my views on bills and on issues. I do travel a great deal, but not when the Senate is sitting.

Honourable senators, I feel most uncomfortable to be in this constitutional position. I chose to sit on two committees that have different time slots.

• (1640)

The system of time slots is a good one; it allows us to sit on different days so that we are never caught in that conflict. I even sit on the Human Rights Committee on Mondays, a committee chaired by the Honourable Senator Maheu, because the government asked me to contribute on the important issue of the status of Aboriginal women who happen to get divorced on reserve. I said that I would commit to attend the committee. I do not say “yes” and not go; I say “yes” and I go. They do not have to call me to know if I will be there or not there. That is the way I interpret my professional responsibility in this house.

Today, unfortunately, for the first time in the last five years, I found myself in that position. I was never consulted as to whether or not I could attend the meeting. There was no courtesy. Courtesy is not a rule. Ethical behaviour is not a rule. Ethical behaviour is what is proper.

[Translation]

Much is being made of the word “ethics.”

[English]

In this chamber we want to be more ethical. The first ethic is to attend meetings. There is no need to have an ethics counsellor or officer if we are not here, if we are travelling, if we are somewhere else. Why have a rule on conflict of interest. If we are not here to exercise our duty, it is meaningless.

The first ethic is to be here and to attend the committee you have been ordered to attend. That is the ethic. Should we have an ethics officer for attendance? Maybe. Our major problem arose because some senators did not attend. That is where these problems started. That is where our reputation started to fade, not because of conflict of interest, not because we receive gifts, not because we travel in planes. Our reputations started to be tarnished because we were not here. Why? It is not ethical not to be here. It is not ethical not to be at the committee you are summoned by the standing order to attend.

That is what I think about ethics. The rest has to do with the words "code of conduct." I am in favour of a code of conduct. Believe me, I will write a code with my colleagues on the Standing Committee on Rules, Procedures and the Rights of Parliament. Rely on me to write the rules and draft a code of conduct. I will write a code of conduct, and you may do what you want with it after that. That is not the problem.

The problems start with ethics. Honourable senators know that ethics is not the rule of law; ethics is what you in your conscience think is right and wrong. You do not need to legislate that; we will never be able to legislate ethics.

There must be ethics here. Ethics is the way each one of us sees our respective duty. If we do not recognize that, we can have all the codes of conduct in the world. We can have 10 commissioners of ethics and we will still be unethical. We might abide by the conflict of interest, abide by the rules on gifts and the other rules, but we will miss the most essential element of the respect that we want to get from the public. That is what this is all about: the respect of the public, the integrity and the reputation of this place.

This morning, at the Standing Senate Committee on Legal and Constitutional Affairs, the representatives of the friends and families of the Westray miners were in attendance. I wonder what they thought when they saw a senator going in and out of the room and another one being late. It is as if you are in court. Three judges are in front of you, and one will be there for 10 minutes and then leave, and he will be replaced by another judge for 15 minutes and then leave and come back. That is not the way we do serious work.

The Hon. the Speaker: Senator Joyal, I am sorry to interrupt. I wish to remind honourable senators that this is not a time for debate, but rather a time to focus on the point of order raised by Senator Kinsella.

Senator Joyal: I will conclude, honourable senators.

If we are to review our rules and our conduct, we should review the rules of the standing order to move senators around. That is much more damaging to this institution than anything else we can do in this chamber.

Some Hon. Senators: Hear, hear!

Senator Milne: Honourable senators, it has been common practice in this place since time immemorial to replace senators on committees when other senators are not able to be there. If we should not be allowed to do this, why have we been doing it for years and years? Very few committees in this place end up with the membership with which they began the session. I cannot think of one.

Senator Lynch-Staunton: Yes, there is — the Selection Committee.

Senator Milne: I apologize. The honourable senator is quite right.

I ask any senator here to cite where an order of the Senate states that certain committees sit at specific times. I simply do not believe that it can be done.

I acted properly. I resent any implications whatsoever that I acted improperly.

Senator Cools: Yes, you did!

Senator Milne: I certainly did not!

Senator Cools: You did!

Senator Milne: I did not!

Point of order! Point of privilege, Your Honour!

The Hon. the Speaker: I remind all senators again that this is not a time for debate, but rather a time to focus on the specifics of Senator Kinsella's point of order.

Senator Milne: I once again repeat that no orders of this place have been broken and I acted properly.

Hon. A. Raynell Andreychuk: Honourable senators, I will not unduly delay this point of order. However, our rules, behaviour and conduct must be taken into the greater picture of how we conduct ourselves in what we call a democracy. We pride ourselves on travelling to other countries and speaking about how they should act. That does not mean taking the Constitution or rules and saying that we have the right.

What is the object of being here and going to committees? Is it simply to ram bills through, or is it to take the time to study, to reflect, to debate with each other, to change each other's minds and to come to some consensus? Canada is a diverse society. Part of that diversity is the opposition. We must be given room to put our points of view. Citizens come to us from a slightly different point of view and say, "We have attempted to get to the government; we cannot. You, the opposition, have a particular role to play."

I do not think that we can take the rules in this chamber and say, "Well, it says from 2 to 5 or 9 to 10." I do not think that is the way we should do things.

I have heard comments that, "Well, the committee ended at a quarter to 10." I have gone to committees where I have telephoned the clerk. They are tired of hearing from my office about when committees will start or end. We are not that fine-tuned. We should not be. We sometimes take longer to debate points.

When a committee starts at 8:00, it may end at 9:00. The chairman cannot control that. It may end at noon. Senator Milne had the task of bringing down the gavel at 1:30 p.m. because a senator was still speaking. That is all part of the debate and the thrust here.

The rules must be read in line with what is fair, just and appropriate. The rules are not there simply to be taken advantage of.

My concern is: Whose agenda are we moving to? Are we moving to the Senate's agenda or some other agenda? Time and time again, we are told about November 7. In 2003, in a modern democracy, we are still playing games about whether or not we are sitting?

We should be told there is a deadline of November 7, and then we will all readjust. I will cancel speeches. I will not vote in Saskatchewan in the provincial election if November 7 is the real date, but we do not know. What can we go by? The rules. We should abide by those rules. We should give the spirit to those rules that gives the greatest stretch to the opposition as well as the government.

• (1650)

The Hon. the Speaker: I will not recognize senators a second time, except for Senator Kinsella.

Senator Cools: You already did, Your Honour.

The Hon. the Speaker: I know I did. We have spent an hour on this point of order. I understand how important it is, but I will have to bring it to an end in order to serve the interests of this chamber in terms of the other business that it has to deal with.

[Senator Andreychuk]

Hon. Jeremiah S. Grafstein: I will be very brief, honourable senators. I did make an earlier intervention before this point of order was raised, but I take Senator Andreychuk's point and the new information that Senator Joyal put on the table, that is, that this meeting could have been arranged at nine o'clock to accommodate the opposition. I was very uncomfortable with the proposition that we could not arrange a time today that would accommodate members opposite because to sit with only one party represented on an issue that deals with the constitution of the house is difficult.

I believe there is an obligation on the part of the chairman of a committee who changes what we consider to be the conventional practices of meetings to explain why a change was made, and I have not yet heard that explanation.

I support the point of order and look for your elucidation, Your Honour.

Senator Kinsella: Honourable senators, I will conclude by expressing the view that in our debates here nothing is argued in an *ad hominem* way. I respect all honourable senators, and troll never for ill will anywhere. It is only the issue that we speak of.

I think His Honour would be doing a great service to the chamber if he would give some attention to the matter of practice, usage and custom. There is a whole section on it in *Erskine May Parliamentary Practice*, 22nd edition, although I will not read it. You will find it referred to in several sections throughout that volume.

I think the issue that we have apprehended here is anchored in the rules. Our own rules do recognize the importance of custom and usages, and clearly throughout the parliamentary literature you will find much. I was just glancing through the companion to the standing orders of the House of Lords, where there are references.

We cannot ignore customs, practices and traditions. Not everything is captured in the rules, but there is enough in the rules, I believe, in this issue to make the point.

With that, I hope that we have been helpful to Your Honour in looking at this matter.

The Hon. the Speaker: Thank you, honourable senators. I listened and made some notes. I intend to try to form a response, as you have requested of me, on whether there is a point of order. I will leave the Chair and ask the Speaker *pro tempore* to take the chair. I hope to be back soon.

This matter does not interfere with any of the matters on our Order Paper and, accordingly, the business of the Senate can proceed while I am absent.

[Translation]

CRIMINAL CODE

BILL TO AMEND—FIRST READING

The Hon. the Speaker *pro tempore* informed the Senate that a message had been received from the House of Commons with Bill C-32, An Act to amend the Criminal Code and other Acts.

Bill read first time.

The Hon. the Speaker *pro tempore*: Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for second reading two days hence.

[English]

PUBLIC SERVICE MODERNIZATION BILL

THIRD READING—DEBATE CONTINUED— VOTE DEFERRED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, An Act to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts.

Hon. Donald H. Oliver: Honourable senators, I am pleased to rise to join in the debate on this very important bill in relation to the reorganization of the Public Service of Canada.

It was on June 16 of this year that Senator Lowell Murray received a letter from Mary Gusella, the Chief Commissioner of the Canadian Human Rights Commission. In that, she drew his attention to the view of the commission regarding the potential impacts of certain provisions of Bill C-25 on the operations of the Canadian Human Rights Commission. She indicated that they were concerned that some provisions of the bill dealing with redress procedures will unduly impair the ability of the Canadian Human Rights Commission to carry out its statutory mandate.

It is important to note that this letter resulted in a legal opinion by Professor Ed Ratushny, a very well-known and highly respected lawyer in the Ottawa area. He conducted an independent legal analysis of the impact of the bill as it affected the operations of the Human Rights Commission. His report was circulated widely and was drawn to the attention of the Honourable Lucienne Robillard and her officials long before the matter ever came to this chamber.

When Bill C-25 was before the Standing Senate Committee on National Finance, I moved two amendments to introduce the possibility of the Human Rights Commission asserting its competence over certain complaints brought before the Public Service Labour Relations Board that involve human rights questions. These amendments came from an assessment of Professor Ed Ratushny of the operations of the Human Rights Commission under the proposed legislation. This assessment was commissioned, as I said, by the Canadian Human Rights Commission. His testimony before the committee raised several shortcomings in the bill with regard to the Human Rights Commission's powers of intervention in labour disputes. These are issues that must be taken seriously, as they will have grave consequences on the effectiveness and the efficiency of labour dispute settlements.

One of the most alarming points raised by Professor Ratushny's analysis was that the commission would be restricted to intervenor status in labour relations hearings dealing with human rights questions. Simply put, the arbitration process does not have the necessary expertise to deal with such cases, and the powers given to the commission are not enough for it to carry out its mandate in this circumstance.

The Human Rights Commission is to have standing in certain cases, so we must give the commission the power to assert priority jurisdiction over cases dealing with human rights infringements. That was, and still is, the goal of the amendments that I had moved. To do otherwise would be to render a disservice, not only to the Human Rights Commission by limiting its powers to act in the field of competence but also to the individuals who have been wronged.

I would like to quote from Professor Ratushny's letter to explain precisely what he found to be the evil that he sought to remedy. I quote from his formal legal opinion as follows:

The opportunity for the Commission to intervene is a recognition in Bill C-25 that there are shortcomings to the ability of labour arbitrators to deal adequately with human rights issues. These limitations are very real. At a fundamental level, arbitration is designed to deal with workplace and employment disputes and not to adjudicate quasi-constitutional human rights. Arbitration is designed to deal with issues specific to individual grievors and not to address broader systemic issues which affect society at large. Unlike the systems established by human rights legislation, arbitration is an adversary process between two parties, in which the public interest is not represented. Moreover, special concerns arise in relation to human rights issues where the interests of the Union and the individual employee diverge.

• (1700)

Finally, the absence of any requirement of human rights expertise on the part of arbitrators under the PSLRB and PSST is demonstrable in the provisions of Bill C-25. Section 18(1) requires adjudicators to have "knowledge of or experience in labour relations". In contrast, section 48.1(2) of the CHRA requires Tribunal members to have —

— and listen to this language —

— “experience, expertise and interest in and sensitivity to human rights.”

The provision in Bill C-25 authorizing intervention by the Commission in arbitration hearings is an awkward and ineffective attempt to respond to these concerns. It does not take into account each of these specific limitations and how they may be overcome.

Professor Ratushny brought another major problem to the attention of our committee. He indicated that under the principle of judicial bias the ability for the Human Rights Commission to hear a case, which had previously gone before the arbitration process, would be seriously hindered.

This well-established legal principle relies on either the appearance of a *de facto* bias, as in the case of an advocate for the Human Rights Commission that has intervened with regard to a case involving human rights both at the arbitration level and again at the Human Rights Tribunal, or it relies on the presence of an “institutional bias,” which represents the ability for the Human Rights Commission to be involved in a case at the labour relations level and then to hear the case again at the appeal level — the same case.

The end result of this bias will be that the judgment rendered by the tribunal would be subject to a right of appeal before the courts under the judicial review principle. As Professor Ratushny pointed out, speaking of the right of appeal to the Federal Court under the judicial review principle:

...such litigation will be disruptive of the grievance arbitration process and could put all the grievances involving human rights issues in limbo. Indeed, if C-25 is found to have the practical effect of denying complainants access to the protection of the Canadian Human Rights Act, this could constitute a contravention of Section 15 of the Charter. The result could be to strike down the offending provisions of Bill C-25.

That being said, I urge honourable senators to think long and hard about the possible long-term effects of leaving this section of Bill C-25 untouched. Professor Ratushny argued rather convincingly that the bill’s provisions relating to human rights issues and the corresponding roles of the commission and the Human Rights Tribunal do not reflect an appreciation of the fundamental nature of human rights legislation in Canada; the principle being that just because one is trained as an arbitrator does not mean one has the sensitivities to be a human rights arbitrator.

The crux of the problem is that Bill C-25, as currently drafted, transfers human rights adjudication in relation to the public service to an arbitration process. This arbitration process does not have the necessary expertise or tools to rule on such significant areas of law. The end result of this transfer will be to burden the court system with serious administrative and constitutional challenges to the decisions of the arbitration panels and the Canadian Human Rights Tribunal.

Honourable senators, we have a tremendous responsibility here today. As it currently stands, Bill C-25 is laden with a serious flaw. This is a flaw that can be fixed now rather than a few years down the road as the result of a court decision. This amendment would replace the restriction placed on the Human Rights Commission to play the role of an intervener in relation to cases involving human rights issues with the ability to remove and rule on exceptional cases within its material competence and expertise. It is leaving to the Human Rights Commission those matters that it is qualified to deal with.

That being said, honourable senators, I wish to move an amendment to Bill C-25 to remove this serious flaw in the legislation.

MOTION IN AMENDMENT

Hon. Donald H. Oliver: Honourable senators, I move, seconded by Senator Robertson:

That Bill C-25 be not now read a third time but that it be amended

(a) in clause 2

(i) on page 88, by replacing lines 37 to 40 with the following:

“(2) The Canadian Human Rights Commission may deal with an issue referred to in subsection (1), if it is of the opinion that it is in the public interest to do so, as if the issue were a complaint under the *Canadian Human Rights Act*, and the adjudication proceedings shall be suspended on the request of the Canadian Human Rights Commission.

(3) If the Canadian Human Rights Commission does not decide to proceed with the issue as a complaint under the *Canadian Human Rights Act* within 30 days after the adjudication proceedings are suspended, the adjudication proceedings shall be resumed.”,

(ii) on page 91, by replacing lines 9 to 12 with the following:

“(2) The Canadian Human Rights Commission may deal with an issue referred to in subsection (1), if it is of the opinion that it is in the public interest to do so, as if the issue were a complaint under the *Canadian Human Rights Act*, and the adjudication proceedings shall be suspended on the request of the Canadian Human Rights Commission.

(3) If the Canadian Human Rights Commission does not decide to proceed with the issue as a complaint under the *Canadian Human Rights Act* within 30 days after the adjudication proceedings are suspended, the adjudication proceedings shall be resumed.”, and

(iii) on page 92, by replacing lines 26 to 29 with the following:

“(2) The Canadian Human Rights Commission may deal with an issue referred to in subsection (1), if it is of the opinion that it is in the public interest to do so, as if the issue were a complaint under the *Canadian Human Rights Act*, and the adjudication proceedings shall be suspended on the request of the Canadian Human Rights Commission.

(3) If the Canadian Human Rights Commission does not decide to proceed with the issue as a complaint under the *Canadian Human Rights Act* within 30 days after the adjudication proceedings are suspended, the adjudication proceedings shall be resumed.”; and

(b) in clause 12, on page 139, by replacing lines 1 to 4 with the following:

“(6) The Canadian Human Rights Commission may deal with an issue referred to in subsection (5), if it is of the opinion that it is in the public interest to do so, as if the issue were a complaint under the *Canadian Human Rights Act*, and the proceedings before the Tribunal shall be suspended on the request of the Canadian Human Rights Commission.

(6.1) If the Canadian Human Rights Commission does not decide to proceed with the issue as a complaint under the *Canadian Human Rights Act* within 30 days after the proceedings before the Tribunal are suspended, the proceedings before the Tribunal shall be resumed.”.

Honourable senators, I commend those amendments to your attention.

Some Hon. Senators: Hear, hear!

• (1710)

Hon. Joseph A. Day: Honourable senators, first, I would like to thank Honourable Senator Oliver for his comments. Honourable senators will know that both of these issues — now becoming one issue in the form of an amendment — were dealt with as two separate amendments proposed at committee stage. We had the benefit of hearing from Professor Ratushny, a very well-respected professor of law. We also had the benefit of considering a recent decision of the Supreme Court of Canada. Professor Ratushny's comments, taken at face value, suggest that the expertise in the Human Rights Commission should win out over the procedure that is outlined in Bill C-25, under both the labour aspect — represented by the Public Service Labour Relations Act which is part of the bill — as well as the Public Service Employment Act, where individuals are involved. In each instance where there is a grievance to be addressed, the plan in Bill C-25 is to allow the grievance adjudicator to resolve the issue.

In each instance, in Bill C-25, the provision is to ensure that notice is given. If a grievor raises an issue of human rights, notice must be sent to the Canadian Human Rights Commission, and the commission has the opportunity to make submissions.

In the proposed amendment, my honourable colleague is suggesting that the individual's choice of raising this issue within the structure of Bill C-25 would be stopped. The grievor's choice to file a grievance within the grievance adjudication process under either one of the two acts — that is, the labour act or the individual act — within Bill C-25, as a labour issue, would be stopped for at least 30 days. The Human Rights Commission would have the right to decide whether to take possession of that issue.

Bill C-25 suggests that such matters be dealt with within the labour management and employment management structure that is provided. Professor Ratushny argued that the adjudicator within Bill C-25 would not have the expertise, and that there is lots of expertise within the Human Rights Commission. That is true; there is more expertise within the Human Rights Commission. However, the Human Rights Commission will get notice of any human rights issue and has the right to make submissions in the adjudication process within Bill C-25.

Senator Oliver: Only as an intervenor.

Senator Day: Honourable senators, the Supreme Court of Canada considered this issue of expertise. The Supreme Court of Canada ruled in a decision of the *Parry Sound District School Services Administration Board v. the Ontario Public Service Employees Union Local 324*. That decision was released on September 18, 2003.

The court stated:

...the Human Rights Commission has a greater expertise than grievance arbitrators in the resolution of human rights violations. In my view, any concerns in respect of this matter are outweighed by the significant benefits associated with the availability of an accessible and informal forum for the prompt resolution of allegations of human rights violations in the workplace...Moreover, expertise is not static, but, rather, is something that develops as a tribunal grapples with issues on a repeated basis.

The Supreme Court of Canada has spoken on this issue and has said that the approach proposed in this legislation is the right one: Deal with it within the structure of employment management. The expeditious manner in which matters can be dealt with there is the right way to address matters.

Therefore, honourable senators, I respectfully submit that we should not accept this amendment, and that we should follow the direction that Bill C-25 is taking and the decision that was made at the committee stage in rejecting the amendment.

Some Hon. Senators: Hear, hear!

Senator Oliver: Honourable senators, will the Honourable Senator Day accept a question?

Senator Day: I would be pleased to attempt to answer the honourable senator's question.

Senator Oliver: The honourable senator quoted from a recent case of the Supreme Court of Canada. The portion he quoted dealt with the definition of the word "expertise." As he knows from the evidence given by Professor Ratushny, the professor was referring to section 48 of the Canadian Human Rights Act that certainly uses the word "expertise" but it goes a lot farther and uses language that the Supreme Court did not consider.

I will read for the honourable senator section 48(1)(2) of the act:

...experience, expertise and interest in, and sensitivity to, human rights.

That is the expertise that Professor Ratushny and the Canadian Human Rights Commission feel is lacking in an ordinary labour arbitrator. They have not had that special training that is required. The Supreme Court did not deal with that extra requirement. What can the honourable senator say about that?

Senator Day: I thank the honourable senator for his question. There is no question that there is expertise in the Canadian Human Rights Commission. That is why Bill C-25 provides that any time an issue of human rights is raised, the Human Rights Commission must be given notice, and the Human Rights Commission may then make submissions to the adjudication process with respect to that expertise that they have.

Senator Oliver: They only have intervener status. They cannot, in fact, use their training and their sensitivities to deal with the matter as a case. Intervener status is not adequate to be able to fully discharge the duties and obligations they have under the Canadian Human Rights Act. That is the failure.

Senator Day: This is where my friends and I diverge. First we were talking about their expertise and now he wants them to become a party. Their expertise can be taken advantage of as experts making submissions in the adjudication process.

The Hon. the Speaker pro tempore: Are honourable senators ready for the question?

Some Hon. Senators: Question!

The Hon. the Speaker pro tempore: It was moved by the Honourable Senator Oliver, seconded by the Honourable Senator Robertson, that Bill C-25 be not now read third time but —

Senator Carstairs: Dispense!

The Hon. the Speaker pro tempore: Those in favour of the motion will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker pro tempore: Those opposed to the motion will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker pro tempore: In my opinion, the "nays" have it.

And two senators having risen:

The Hon. the Speaker pro tempore: Call in the senators.

Hon. Terry Stratton: Honourable senators, I would ask that the vote be deferred until 5:30 p.m. tomorrow.

Hon. David P. Smith: I understood there was an agreement for Monday at 4:00 p.m., with the bell ringing at 3:30.

Senator Stratton: Fine.

The Hon. the Speaker pro tempore: Is it agreed, honourable senators, that the vote will be held next Monday at 4:00 p.m., and that the bell will ring at 3:30 p.m.?

Hon. Senators: Agreed.

• (1720)

ASSISTED HUMAN REPRODUCTION BILL

SECOND READING—DEBATE ADJOURNED

Hon. Yves Morin moved second reading of Bill C-13, respecting assisted human reproduction.

He said: Honourable senators, I rise today to speak on Bill C-13, the Assisted Human Reproduction Act. This bill has been a long time coming. Louise Brown, the first so-called "test tube" baby, was born through *in vitro* fertilization 25 years ago in Britain. Canada's Royal Commission on New Reproductive Technologies issued its report more than 10 years ago. Bill C-47, the first attempt to legislate these technologies, died on the Order Paper more than seven years ago.

All told, we have engaged in more than 12 years of discussion, consultation and debate in this country. Now it is time for the Canadian Parliament to legislate decisively on this crucial issue. Bill C-13 provides us with a means to do so.

This is an important bill, one that addresses complex ethical, medical and scientific issues and addresses them in a comprehensive manner. It is for this reason that suggestions to split this bill along one line or another would undermine its objectives.

[Translation]

Honourable senators, this bill also addresses a serious legal vacuum. At present, there is no legal framework in Canada regulating assisted human reproduction. Such a framework is all the more necessary since certain groups like the Raelians, whose headquarters are in Quebec, have stated through Ms. Boisselier that they are currently producing human clones.

[English]

Bill C-13 does a number of important things. First, it sets out guiding principles, enshrined in the legislation, to provide a foundation for decisions in this contentious area. These principles make paramount the health and well-being of children born through assisted human reproduction techniques and of women, who are most affected by these technologies; protect dignity and rights, including the right to free and informed consent; underscore the unacceptability of trade in reproductive capacities; and safeguard the integrity of the human genome.

Second, Bill C-13 prohibits inappropriate uses of reproductive technologies, uses that are universally abhorrent. The bill forbids cloning of a human being by any process and for any purpose; the creation of animal human hybrids and chimeras; implantation of a human embryo into an animal; sex selection, except for prevention of sex-linked disease; and altering the human genome in a way that these alterations can be passed to succeeding generations.

These prohibitions are widely supported by all Canadians, including scientists and researchers. In fact, I know of no serious scientist in this country who would attempt such egregious procedures.

[Translation]

Honourable senators, the bill also deals with the difficult issue of the commercial exploitation of assisted human reproduction. As the royal commission's report recommended, Bill C-13 prohibits any payment to donors of reproductive materials and to surrogate mothers for anything above and beyond reasonable expenses.

Other than prohibitions, this bill is intended first and foremost to protect the vulnerable clients needing assisted reproductive services. These techniques, which I believe are one of the great

accomplishments of modern medicine, are an answer to the desire of most women to have a child.

[English]

Bill C-13 also protects the children born as a result of the use of reproductive technologies. In the decade since the Royal Commission first reported, we have sequenced the human genome and learned just how important a role genetics plays in preventing, diagnosing and treating disease. Bill C-13 ensures that children born through the use of donated gametes will have full access to a detailed medical history of their biological parents.

The bill will ensure safe and beneficial access to technology for the thousands of women who consult infertility clinics in Canada every year. The Society of Obstetricians and Gynaecologists of Canada has recently finalized an accreditation process for these clinics. Nonetheless, the society fully supports the creation, through this bill, of the proposed Assisted Human Reproduction Agency that will monitor and enforce the act.

In particular, this agency will license fertility clinics, ensure quality control and guarantee the safety of cells and tissues for assisted human reproduction. It will ensure the privacy and informed consent of persons using assisted human conception and ensure that they are actively involved in the decision-making process. Canadian women deserve no less.

Honourable senators, reproductive technologies are becoming a very important issue in the lives of Canadians. One in eight couples today are challenged by infertility, and the numbers are rising. These techniques are often invasive and complex and women must be protected when they submit to these difficult procedures.

Even more important, we must ensure that those children born from these treatments will not be exposed to risks as the result of a failure to consider the ethical as well as the technical aspects of these technologies. This bill ensures that women and children are well protected in these circumstances. However, developments in this area are marching rapidly. Research advances are raising new hopes for those who have not been helped to date but also raising new concerns, concerns that affect all Canadians.

Bill C-13 responds to these concerns. The agency that the bill creates not only regulates treatment but will also regulate research involving human embryos. This research is essential for the safety of cells and tissues used in assisted human reproduction and for the quality of fertilization procedures. Research on human embryos has now been regularly performed in Canadian fertility clinics for more than 20 years. Now, under Bill C-13, these research sites would be licensed and the research would be carefully monitored to ensure that high standards of safety and ethics are maintained.

The regulatory provisions of Bill C-13 will ensure that these donated embryos are used to advance our knowledge and increase the chances of a successful pregnancy and birth for women undergoing *in vitro* fertilization. This goal, namely, the birth of healthy babies to families who would otherwise be childless, is at the heart of Bill C-13, and I regret that this has been overshadowed by the attention paid to stem cell research. This imbalance is not altogether surprising, though, given the tremendous potential of stem cells. Bill C-13 makes the same regulatory provisions for stem cell research as for embryo research.

Embryonic stem cells are cells that are harvested from the embryo at a very early stage when it contains only some 150 identical cells called blastocysts. These cells are unique in that they can transform in any type of specialized tissue in the body. This unique property means that one day embryonic stem cells may cause a child with muscular dystrophy to walk; a child with haemophilia to play without bleeding to death; a child with diabetes to lead a normal, uncomplicated life. Indeed, embryonic stem cells hold tremendous potential to help any number of chronic conditions — a potential that is recognized by researchers throughout the country.

• (1730)

By no means does Bill C-13 facilitate and promote embryo research. Instead, it would establish clear boundaries, where none currently exist, as to what constitutes acceptable research and under what condition research involving the *in vitro* human embryo could be undertaken.

[Translation]

In Quebec, for example, the Fonds de recherche en santé du Québec recently adopted a position in favour of allowing regulated research on embryonic stem cells, a position which supports this bill.

Once Bill C-13 is in force, it will only be possible for researchers to use stem cells from excess embryos, embryos that were not used during assisted fertilization, or embryos that are to be destroyed. Nor will it be possible to create embryos for any reasons other than human reproduction; this is a fundamental principle of this bill.

Honourable senators, these are the main features of this bill, which is an excellent one in my opinion. It is the result of more than ten years of debate and consultations at all levels, beginning with the monumental royal commission of 1989 and its 293 recommendations. Everyone's voice was heard, often more than once, and people often spoke passionately.

[English]

Indeed, the fruit of that national discussion can be seen here in Bill C-13. Women's organizations, voluntary organizations representing hundreds of thousands of Canadians, all national

medical organizations and virtually every Canadian scientist involved in this type of work have all expressed their approval of Bill C-13.

Four days ago, a group of 65 Canadian health care ethics and health law experts, in fact, nearly all health ethicists and lawyers in the country, published an open letter supporting Bill C-13 and urging parliamentarians and especially senators "to resist the pressures that are being brought to bear against the Bill. The safety and well being of Canadian women and children depends upon them passing the legislation now."

At the international level, at a major conference held recently in Berlin, Bill C-13 was noted as model legislation that would draw clear lines on acceptable practices like human cloning and the creation of so-called designer babies, while protecting and promoting the health of women and children.

Honourable senators, we know that in the rapidly changing world of reproductive technologies, we cannot rest on our laurels, assuming that our work is done. This is why Bill C-13 mandates a full review of the legislation by both Houses of Parliament three years after its passage. We know, then, that if Bill C-13 is passed, women and children will be protected. Research will be regulated, and regular review to adapt to changing circumstances will be mandated.

If it does not pass, we can be sure that the policy vacuum that has characterized the Canadian situation for years will continue, leaving the door wide open to groups such as the Raëliens, intent on cloning human beings and engaging in other practices abhorrent to Canadians.

If Bill C-13 is not passed, there will be no regulatory oversight to protect children born through assisted human reproduction techniques. There will be no legislation to protect thousands of women who consult the infertility clinics in Canada.

Honourable senators, the Senate must show that it can act decisively for the common good and respond unequivocally to the wish of the great majority of Canadians by voting in favour of Bill C-13 and against a legal void. Thank you.

Hon. Anne C. Cools: Honourable senators, I have a question. I thank Senator Morin for his speech, and I am pleased to see that Senator Keon is standing ready to adjourn the debate, because I think, quite frankly, this chamber is blessed by having such able doctors, such able physician specialists, in our midst.

Can Senator Morin answer one question? I will understand if he cannot.

In the other place, this bill encountered considerable objections from many members of the Liberal caucus. Could Senator Morin summarize for us some of those objections. As a doctor, I am sure he has greater insight into some of these problems.

[Senator Morin]

Senator Morin: Honourable senators, I am in a very difficult position. I believe very strongly in the virtues of this bill. I have reviewed the various objections that were submitted and I feel that they are without foundation. I believe that some of them had a pseudo-scientific basis that could not bear scrutiny; others were based on non-scientific grounds, and I respect those.

I would repeat: What is the alternative if we do not vote for this bill? We will have a legal void. Children and women will not be protected. Believe me, this is a very difficult field. Many fertility clinics are not within hospitals. They are free-standing. It is extremely important for these fertility clinics to be well regulated.

Women and couples can frequently be at a vulnerable stage in their lives. It is especially important that we realize that there are serious risks for children who are born from these technologies. If this bill is not passed, these children and women will be without protection.

Senator Cools: I thank Senator Morin for his response. Could he give us more insight about some of the risks? He told us that these children are at risk or in danger. Could he expand on that?

I am sure that Senator Morin recognizes that this chamber has had very little debate on or insight into some of these questions, even though the bill has been around for a long time. Very little is on our record. Some of us are looking to Senator Morin for some elucidation.

Senator Morin: Honourable senators, if these techniques are properly applied, and if they are well regulated, there is no risk. The risk is when certain techniques lead to a large number of multiple births. We know that multiple births are associated with prematurity and that in certain cases prematurity can lead to other difficulties. This is why it is important for these technologies to be well regulated.

I fully realize that the Canadian Society of Obstetricians and Gynaecologists has recently set up a voluntary regulatory process of various clinics. In addition, it is important to have an agency that has powers to licence these clinics, to inspect them, to receive information on the conduct of the procedures that are done there, and to be sure that these women and children are protected. The message I should like to convey is that, if the procedures are carried out as they should be, there is no risk to children, but if they are not, there is risk. It is critical to pass this legislation as quickly as possible to ensure that children and women are protected.

• (1740)

Hon. Wilbert J. Keon: First, I would like to compliment Senator Morin for a very enlightened presentation of the positive aspects of this enormously complex bill. I would also like to move adjournment of debate.

On motion of Senator Keon, debate adjourned.

CRIMINAL CODE

BILL TO AMEND—THIRD READING

Hon. Wilfred P. Moore moved the third reading of Bill C-45, to amend the Criminal Code (criminal liability of organizations).

He said: Honourable senators, in moving third reading of Bill C-45, I wish to thank those senators on both sides of the chamber who supported its expeditious processing. I want to thank Senator Forrestall for his moving and supportive speech at second reading. I want to thank Senator Furey and the members of the Standing Senate Committee on Legal and Constitutional Affairs for their diligent work on this bill.

I commend Vernon Theriault, a former Westray miner who received the Medal of Bravery for his work as part of the rescue effort, and his colleagues, Ms. Del Paré and Peter Boyle, for their dogged pursuit of this legislation.

Had Bill C-45 been in place in 1992, it would not have prevented the Westray disaster, but it would have ensured that those in management would have been brought to bar to answer the many questions of the families and friends of the departed 26 miners. That is all that the people of Pictou County ever wanted.

Honourable senators, this bill is for those 26 miners, 11 of whom are entombed forever in that mine.

Hon. A. Raynell Andreychuk: Honourable senators, I want to echo the words of Senator Moore on the importance of Bill C-45. I cannot speak as eloquently about the Westray disaster as those who were closer in Nova Scotia, but I think it is one of those singular moments in Canadian history that most Canadians remember. We were all horrified as the inquiry into the incident unfolded, and we look forward to a day when corporations and individuals will not be allowed to risk the lives and the welfare of other human beings. That is simply not tolerable in this day and age.

I believe enough has been said about Bill C-45 and its progression. I simply want to underscore a number of points.

First, anything as important as this bill from the government should come to the Senate in such a way that we can pay justice to it. The way we can pay justice to those who died would be to respect democracy and ensure that this bill receives the utmost attention and due diligence that this Senate can afford it.

Second, my hope would have been to deal with this bill in a routine manner so that we could have studied in the fullness of time and given it the respect that it deserves.

Third, no matter how long we work at a bill, its importance comes down to the wording of the bill. I believe this bill contains one of the finest intentions that I have seen come through Parliament; nonetheless, that intention will not come to fruition if the words within the bill do not fully represent that intention.

We know that drafting is a very difficult matter. Words sometimes may be intended by the drafters to mean one thing, but they may be interpreted by the courts to mean another. What I would not want to see is this bill experience difficulty in the future whether from the unintended consequences of the wording or that some of its clauses cannot be implemented for various reasons. Therefore, it was extremely important that the Standing Senate Committee on Legal and Constitutional Affairs have at least some time to study the bill. I want to bring some of those signals to the chamber here and to alert the minister and ministry officials that due diligence be taken from this point on in the administration of this bill and in the conduct of the administration of justice.

I pointed out one section where "senior officer" is defined as one of the persons who will speak for the organization and bind the organization, should they find themselves subject to this bill. There is a word that I have yet to see in legislation when we say a "senior" officer means "a representative who plays an important role" in the establishment of an organization's policy. The words "a representative who plays an important role" do not necessarily mean a "senior" officer. It simply means someone a representative of the company who plays an important role yet to be defined by the courts.

I sincerely hope that there will be guidelines and examples from the ministry to assist companies that want to abide by the law, on the one hand, and to give the signal to everyone else what is meant by these terms.

The government took the opportunity with this bill not to just address the issues of the Westray mine but also to codify in the statute the duty of care that must be taken by all of us.

This section does not deal with corporations and institutions as does the rest of the bill. It will bind all of us. To this point, the duty of persons has been the common law. Here, we are codifying all of the common law, bringing it into this section. I would like to read it because it is paragraph 3 of the bill. It will be section 217.1 of the Criminal Code:

Everyone who undertakes, or has the authority, to direct how another person does work or performs a task is under a legal duty to take reasonable steps to prevent bodily harm to that person, or any other person, arising from that work or task.

Honourable senators, it is not a difficulty that this proposed section of the Criminal Code is being added to codify this duty that we all will have, but it is being put in the middle of a bill that

deals with the Westray mine disaster. My concern is that we are codifying common law, and it is the ministry's best attempt at defining all of the common law within this particular section.

• (1750)

Under questioning, the minister's representative very correctly pointed out that it is the ministry's best attempt at a codification, and that the courts may see it otherwise.

Honourable senators, in the committee, Senator Moore pointed out that there have been some attempts by the department to signal this change for all of us. I had hoped that it would be in our comments. There had been agreement that the attachment that came to you would not only contain the comments about various separate senators: Senator Beaudoin, Senator Joyal and myself, and our difficulty with the proceedings, but that we had hoped there would be a section here — and I thought there had been some agreement, but I think, in our haste, it has been omitted — that the ministry undertake reasonable steps to bring to the attention of the public this proposed new section, by which we will all be bound, and in particular to bring it to the attention of the police, prosecutors and the entire legal community who will have to deal with any new sections that have to do with duty of care.

I am hopeful — although we have not had sufficient time to study it — that it is a full compilation of the common law. I do not believe that senators had taken the time to do so, at least none at the committee expressed themselves that they had. I certainly had not. Consequently, I believe it is an extremely important section. Codification of the common law can be argued to be favourable or not.

The point is, if the government decided to do it and it binds us beyond corporations, it would have been admirable to have had it brought in a separate amendment or a separate statute. However, inside the statute as it is now, the public has the right to know, beyond the legal notifications that are normally done.

My final point is that, in drafting, we were told that the ministry is now looking to new ways of using the English and French language. I was working from the English version, and hopefully the French version is as adequate. They want to use common words and not Latin words. In the proposed new section 22.2, which deals with *mens rea*, they have not used *mens rea*; they have used the term in English, "mental state."

While the term "mental state" has been used in judgments and by the courts and the legal community, it has not been used in the Criminal Code. The ministry rightly pointed out that while this term has been used elsewhere, this would be the first time that the term "mental state" will be used in the Criminal Code. The official indicated that this was done to cover all kinds of terms such as "knowingly," "wilfully," and "with intent."

Since our country was founded, we have had many occasions to discuss *mens rea*. However, to turn *mens rea*, the compilation of all the terms that mean *mens rea*, into the term “mental state,” one can only hope that the courts will interpret that in the same way as the department and the ministry intended. This is a new term, the first time that it will be in the Criminal Code. It would have been worthy of much greater discussion.

I reference these two important proposed new sections because it is just for this that I say to the people of Westray: You deserve the best piece of legislation, one that can be fully supported by all, not only in the intent, but also where we have a reasonable assurance that the words within the act speak to what we intend.

I would not want to be back at some later time trying to perfect the bill. There has been too much delay and too much agony. This bill stands for what the Westray people want, to ensure that others are not put in the position that they were, whether they are the victims or those who are left to mourn for them.

The best legacy the Senate could offer is to pass this bill. The emergency here is the emotional need to resolve the Westray situation.

In addition, I would like an undertaking that we not pass bills of this importance “crunched” — if I can accept the gossip — at the end, in a rush, first, second and third reading, where we cannot do justice to something so important. However, when we weighed the importance of this issue, I had to yield.

I hope that the words in this act reflect the intent. I have had to raise and flag the issues that concerned me, so that the members here will reflect and ensure that those words intend what we believe them to do. We need to also ensure that the public is aware of the full contents of this bill and the two additions to the Criminal Code that will not only affect those touched by Westray but will also affect all of us. The duty of care is such an important concept in our law, and one that must be fully understood.

I hope that at some stage in the Standing Senate Committee on Legal and Constitutional Affairs we will take some time to reflect and relook at this issue, including the issue of *mens rea*, which now appears to be stated as “mental state.”

I wish to thank all honourable senators who participated. I certainly wish to express my appreciation to all of those whom Senator Moore has pointed out.

Westray representatives contacted me some time ago. However, I think they knew that those closest to and in Nova Scotia live with the memory every day. I laud them for their perseverance in ensuring that we build communities with greater care for those who work for us.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I wish to participate in this debate, but I am also mindful of the clock. Perhaps I could ask my colleague the

Deputy Leader of the Government whether or not he could share with us what he would see happening at six o'clock. Does he have a view that he can share with us at this point?

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, sometimes I hesitate. My intention as the deputy leader was to stand everything after government business. There was a senator who was saying that if we did that, then he would agree that he would not be called on to speak. I would not want to go past six o'clock and not see the clock and then continue, because that would not respect my undertaking to that certain senator. If we were to continue past six o'clock, I think honourable senators would want us to do so in order to terminate this item.

Senator Kinsella: On behalf of the opposition, we express our agreement that at six o'clock we will not see the clock for the purpose of completing this business, and then all other items would stand.

Senator Lynch-Staunton: No other business except the adjournment.

Senator Kinsella: Honourable senators, I will be brief. I wanted to make a couple of points on this bill. Senator Forrestall spoke for us at second reading and made our support of the bill clear. The expression that we have now had from Senator Andreychuk also underscores the support that is here and the technical problems have been identified.

• (1800)

As you can appreciate, we are particularly pleased with the progress that has been made by the Senate. As we were reminded, our national leader, the Honourable Peter McKay, was and is the member of Parliament for Pictou-Antigonish-Guysborough.

The Hon. the Speaker: I regret to interrupt. It being six o'clock, is it agreed that we not see the clock?

Hon. Senators: Agreed.

Senator Kinsella: A number of years ago, Mr. McKay introduced a motion calling on the government to bring forward this type of bill. We congratulate the government for doing that and are pleased to be supporting such a bill.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I met with the committee a few minutes ago. They have put forward a request that this bill be given a formal Royal Assent process, rather than the written one that we sometimes use. I want them to know that that is the way in which we will proceed.

Hon. Senators: Hear, hear!

The Hon. the Speaker: Is the house is ready for the question?

Hon. Senators: Question!

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and bill read third time and passed.

[*Translation*]

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, we had agreed to have all items on the Orders of the Day that had not been reached stand in their place until the next sitting of the Senate. I so move.

I am being reminded that His Honour may be ready to rule on a point of order. This is beyond my abilities. If we stood all these items, it would not interfere with making his ruling.

[*English*]

The Hon. the Speaker: Honourable senators, I am ready to respond to Senator Kinsella's request. However, I am not sure whether you want me to, given the agreement.

Senator Kinsella: We have an agreement.

The Hon. the Speaker: My sense is that we proceed to the adjournment, based on the exchange I heard between the two house leaders.

[*Translation*]

ADJOURNMENT

Leave having been given to revert to Government Notices of Motions:

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until Monday, November 3, 2003, at 2 p.m.

The Hon. the Speaker: Honourable senators, is leave granted?

Hon. Senators: Agreed.

Motion agreed to.

The Senate adjourned until Monday, November 3, 2003, at 2 p.m.

THE SENATE OF CANADA
PROGRESS OF LEGISLATION
(2nd Session, 37th Parliament)
Thursday, October 30, 2003

GOVERNMENT BILLS
(SENATE)

No.	Title	1 st	2 nd	Committee	Report	Amend	3 rd	R.A.	Chap.
S-2	An Act to implement an agreement, conventions and protocols concluded between Canada and Kuwait, Mongolia, the United Arab Emirates, Moldova, Norway, Belgium and Italy for the avoidance of double taxation and the prevention of fiscal evasion and to amend the enacted text of three tax treaties.	02/10/02	02/10/23	Banking, Trade and Commerce	02/10/24	0	02/10/30	02/12/12	24/02
S-13	An Act to amend the Statistics Act	03/02/05	03/02/11	Social Affairs, Science and Technology	03/04/29	0	03/05/27		

GOVERNMENT BILLS
(HOUSE OF COMMONS)

No.	Title	1 st	2 nd	Committee	Report	Amend	3 rd	R.A.	Chap.
C-2	An Act to establish a process for assessing the environmental and socio-economic effects of certain activities in Yukon	03/03/19	03/04/03	Energy, the Environment and Natural Resources	03/05/01	0	03/05/06	03/05/13	7/03
C-3	An Act to amend the Canada Pension Plan and the Canada Pension Plan Investment Board Act	03/02/26	03/03/25	Banking, Trade and Commerce	03/03/27	0	03/04/01	03/04/03	5/03
C-4	An Act to amend the Nuclear Safety and Control Act	02/12/10	02/12/12	Energy, the Environment and Natural Resources	03/02/06	0	03/02/12	03/02/13	1/03
C-5	An Act respecting the protection of wildlife species at risk in Canada	02/10/10	02/10/22	Energy, the Environment and Natural Resources	02/12/04	0	02/12/12	02/12/12	29/02
C-6	An Act to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts	03/03/19	03/04/02	Aboriginal Peoples	03/06/12	5	referred back to Committee 03/09/25		
					03/10/07	-	03/10/21		
C-8	An Act to protect human health and safety and the environment by regulating products used for the control of pests	02/10/10	02/10/23	Social Affairs, Science and Technology	02/12/10	0	02/12/12	02/12/12	28/02
C-9	An Act to amend the Canadian Environmental Assessment Act	03/05/06	03/05/13	Energy, the Environment and Natural Resources	03/06/04	0	03/06/05	03/06/11	9/03

No.	Title	1 st	2 nd	Committee	Report	Amend	3 rd	R.A.	Chap.
C-10	An Act to amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act	02/10/10	02/11/20	Legal and Constitutional Affairs	02/11/28	Divided Message from Commons concurring with division 03/05/07			
C-10A	An Act to amend the Criminal Code (firearms) and the Firearms Act	-	-	Legal and Constitutional Affairs	02/11/28	0	02/12/03	03/05/13	8/03
C-10B	An Act to amend the Criminal Code (cruelty to animals)	-	-	Legal and Constitutional Affairs	03/05/15	5	03/05/29 Message from Commons-agree with two amendments, disagree with two, and amend one 03/06/09 Referred to committee 03/06/11 Reported 03/06/12 Report adopted (insist on one, replace one, amend one) 03/06/19 Message from Commons-disagree with Senate's amendments 03/09/30		
C-11	An Act to amend the Copyright Act	02/10/10	02/10/30	Social Affairs, Science and Technology	02/12/05	0	02/12/09	02/12/12	26/02
C-12	An Act to promote physical activity and sport	02/10/10	02/10/23	Social Affairs, Science and Technology	02/11/21	0 + 1 at 3 rd 02/12/04 2 at 3 rd 03/02/04	03/02/04	03/03/19	2/03
C-13	An Act respecting assisted human reproduction	03/10/28							
C-14	An Act providing for controls on the export, import or transit across Canada of rough diamonds and for a certification scheme for their export in order to meet Canada's obligations under the Kimberley Process	02/11/19	02/11/26	Energy, the Environment and Natural Resources	02/12/04	0	02/12/05	02/12/12	25/02

No.	Title	1 st	2 nd	Committee	Report	Amend	3 rd	R.A.	Chap.
C-15	An Act to amend the Lobbyists Registration Act	03/03/19	03/04/03	Rules, Procedures and the Rights of Parliament	03/05/14	1	03/05/28 Message from Commons-agree with amendment 03/06/09	03/06/11	10/03
C-17	An Act to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety	03/10/08							
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2003	02/12/05	02/12/10	—	—	—	02/12/11	02/12/12	27/02
C-24	An Act to amend the Canada Elections Act and the Income Tax Act (political financing)	03/06/11	03/06/16	Legal and Constitutional Affairs	03/06/19	0	03/06/19	03/06/19	19/03
C-25	An Act to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts	03/06/03	03/06/13	National Finance	03/09/18	0			
C-28	An Act to implement certain provisions of the budget tabled in Parliament on February 18, 2003	03/05/27	03/06/04	National Finance	03/06/12	0	03/06/19	03/06/19	15/03
C-29	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2003	03/03/25	03/03/26	—	—	—	03/03/27	03/03/27	3/03
C-30	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004	03/03/25	03/03/26	—	—	—	03/03/27	03/03/27	4/03
C-31	An Act to amend the Pension Act and the Royal Canadian Mounted Police Superannuation Act	03/06/03	03/06/11	National Security and Defence	03/06/16	0	03/06/17	03/06/19	12/03
C-32	An Act to amend the Criminal Code and other Acts	03/10/30							
C-34	An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence	03/10/02	03/10/27	Rules, Procedures and the Rights of Parliament					
C-35	An Act to amend the National Defence Act (remuneration of military judges)	03/06/13	03/09/18	Legal and Constitutional Affairs					
C-36	An Act to establish the Library and Archives of Canada to amend the Copyright Act and to amend certain Acts in consequence	03/10/28							

No.	Title	1 st	2 nd	Committee	Report	Amend	3 rd	R.A.	Chap.
C-37	An Act to amend the Canadian Forces Superannuation Act and to make consequential amendments to other Acts	03/10/20	03/10/27	Social Affairs, Science and Technology					
C-39	An Act to amend the Members of Parliament Retiring Allowances Act and the Parliament of Canada Act	03/06/03	03/06/11	Legal and Constitutional Affairs	03/06/19	0	03/06/19	03/06/19	16/03
C-41	An Act to amend certain Acts	03/10/07	03/10/29	Legal and Constitutional Affairs					
C-42	An Act respecting the protection of the Antarctic Environment	03/06/13	03/09/17	Energy, the Environment and Natural Resources	03/09/18	0	03/10/07	03/10/20	20/03
C-44	An Act to compensate military members injured during service	03/06/13	03/06/13	National Security and Defence	03/06/16	0	03/06/18	03/06/19	14/03
C-45	An Act to amend the Criminal Code (criminal liability of organizations)	03/10/27	03/10/29	Legal and Constitutional Affairs	03/10/30	0	03/10/30		
C-47	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004	03/06/13	03/06/17	—	—	—	03/06/18	03/06/19	13/03
C-48	An Act to amend the Income Tax Act (natural resources)	03/10/22	03/10/27	Banking, Trade and Commerce	03/10/30	0			
C-49	An Act respecting the effective date of the representation order of 2003	03/10/23							
C-50	An Act to amend the statute law in respect of benefits for veterans and the children of deceased veterans	03/10/27	03/10/29	Social Affairs, Science and Technology					
C-53	An Act to change the names of certain electoral districts	03/10/23	03/10/29	Legal and Constitutional Affairs					
C-55	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004	03/10/28							

COMMONS PUBLIC BILLS

No.	Title	1 st	2 nd	Committee	Report	Amend	3 rd	R.A.	Chap.
C-205	An Act to amend the Statutory Instruments Act (disallowance procedure for regulations)	03/06/16	03/06/19	—	—	—	03/06/19	03/06/19	18/03
C-212	An Act respecting user fees	03/09/30	03/10/22	National Finance					
C-227	An Act respecting a national day of remembrance of the Battle of Vimy Ridge	03/02/25	03/03/26	National Security and Defence	03/04/02	0	03/04/03	03/04/03	6/03
C-249	An Act to amend the Competition Act	03/05/13	03/09/17	Banking, Trade and Commerce					
C-250	An Act to amend the Criminal Code (hate propaganda)	03/09/18							
C-300	An Act to change the names of certain electoral districts	02/11/19	03/06/03	Legal and Constitutional Affairs					

No.	Title	1 st	2 nd	Committee	Report	Amend	3 rd	R.A.	Chap.
C-411	An Act to establish Merchant Navy Veterans Day	03/06/12	03/06/17	National Security and Defence	03/06/18	0	03/06/19	03/06/19	17/03
C-459	An Act to establish Holocaust Memorial Day	03/10/21							
SENATE PUBLIC BILLS									
No.	Title	1 st	2 nd	Committee	Report	Amend	3 rd	R.A.	Chap.
S-3	An Act to amend the National Anthem Act to include all Canadians (Sen. Poy)	02/10/02	03/06/10	Social Affairs, Science and Technology	03/10/23	0			
S-4	An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions (Sen. Stratton)	02/10/02							
S-5	An Act respecting a National Acadian Day (Sen. Comeau)	02/10/02	02/10/08	Legal and Constitutional Affairs	03/06/03	2	03/06/05	03/06/19	11/03
S-6	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	02/10/03							
S-7	An Act to protect heritage lighthouses (Sen. Forrestall)	02/10/08	03/02/25	Social Affairs, Science and Technology	03/06/19	0	03/09/24		
S-8	An Act to amend the Broadcasting Act (Sen. Kinsella)	02/10/09	02/10/24	Transport and Communications	03/03/20	0	03/04/02		
S-9	An Act to honour Louis Riel and the Metis People (Sen. Chalifoux)	02/10/23	03/05/06	Legal and Constitutional Affairs					
S-10	An Act concerning personal watercraft in navigable waters (Sen. Spivak)	02/10/31	03/02/25	Energy, the Environment and Natural Resources	03/09/18	0			
S-11	An Act to amend the Official Languages Act (promotion of English and French) (Sen. Gauthier)	02/12/10	03/05/07	Official Languages					
S-12	An Act to repeal legislation that has not been brought into force within ten years of receiving royal assent (Sen. Banks)	02/12/11	03/02/27	Legal and Constitutional Affairs					
S-14	An Act to amend the National Anthem Act to reflect the linguistic duality of Canada (Sen. Kinsella)	03/02/11	03/06/17	Official Languages					
S-15	An Act to remove certain doubts regarding the meaning of marriage (Sen. Cools)	03/02/13	Dropped from Order Paper pursuant to Rule 27(3) 03/06/05						
S-16	An Act to amend the Constitution Act, 1867 and the Parliament of Canada Act (Speakership of the Senate) (Sen. Oliver)	03/03/18							

No.	Title	1 st	2 nd	Committee	Report	Amend	3 rd	R.A.	Chap.
S-17	An Act respecting the Canadian International Development Agency, to provide in particular for its continuation, governance, administration and accountability (Sen. Bolduc)	03/03/25	03/06/19	National Finance					
S-18	An Act to amend the Criminal Code (lottery schemes) (Sen. Lapointe)	03/04/02	03/10/21	Legal and Constitutional Affairs					
S-20	An Act to amend the Copyright Act (Sen. Day)	03/05/15	03/10/07	Banking, Trade and Commerce (withdrawn) 03/10/08 Social Affairs, Science and Technology					
S-22	An Act respecting America Day (Sen. Grafshein)	03/09/16							
S-23	An Act to prevent unsolicited messages on the Internet (Sen. Oliver)	03/09/17							
S-24	An Act to amend the Royal Canadian Mounted Police Act (modernization of employment and labour relations) (Sen. Nolin)	03/10/23							

PRIVATE BILLS

No.	Title	1 st	2 nd	Committee	Report	Amend	3 rd	R.A.	Chap.
S-19	An Act respecting Scouts Canada (Sen. Di Nino)	03/05/14	03/06/09	Legal and Constitutional Affairs					
S-21	An Act to amalgamate the Canadian Association of Insurance and Financial Advisors and The Canadian Association of Financial Planners under the name The Financial Advisors Association of Canada (Sen. Kirby)	03/06/03	03/06/09	Banking, Trade and Commerce	03/10/30	1			

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2nd SESSION

• 37th PARLIAMENT

• VOLUME 140

• NUMBER 93

OFFICIAL REPORT
(HANSARD)

Monday, November 3, 2003

THE HONOURABLE DAN HAYS
SPEAKER

This issue contains the latest listing of Senators, Officers of the Senate, the Ministry, and Senators serving on Standing, Special and Joint Committees.

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(Daily index of proceedings appears at back of this issue).

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THE SENATE

Monday, November 3, 2003

The Senate met at 2 p.m., the Speaker in the Chair.

Prayers.

SENATORS' STATEMENTS

QUESTION OF PRIVILEGE

NOTICE

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, pursuant to Senate rule 43(7) of the *Rules of the Senate of Canada*, I rise to give oral notice that I shall raise a question of privilege this afternoon. Earlier today, pursuant to rule 43(3) of the Rules of the Senate, I gave written notice to the Clerk of the Senate of a question of privilege in respect to a meeting of the Standing Committee on Rules, Procedures and the Rights of Parliament that took place on Friday October 31, 2003, even though the Speaker had not yet ruled on the point of order raised on Thursday, October 30, 2003, respecting the process under which committees may sit outside their designated time slots.

At the appropriate time, I shall be asking His Honour the Speaker to rule on the facts that I will outline in detail at that time in order to make a determination as to whether or not there is, as I believe there is, a *prima facie* case of breach of privilege. If so, I will be prepared to move an appropriate motion.

[Translation]

OFFICIAL LANGUAGES

TRIP OF COMMITTEE TO THE WEST

Hon. Maria Chaput: Honourable senators, I am very pleased to be able to speak today about the public hearings held last week by the Standing Senate Committee on Official Languages in Western Canada, my province of Manitoba in particular. I would like to start by thanking the chair and vice-chair, Senators Losier-Cool and Keon, who are in large part responsible for the success of the hearings.

I thank them also for selecting Saint-Boniface as the venue for meetings with representatives of the Franco-Manitobans and the Fransaskois. My thanks also to the other senators on the committee for having taken an interest in the cause of my fellow citizens and helping me to defend that cause. Finally, I am also grateful to the Centre culturel franco-manitobain for their kindness in providing accommodations for our meetings as well as the necessary logistical support.

Above all, I would like to thank the witnesses from Manitoba who appeared before our committee, from the overview of life in French in Manitoba provided by the Société franco-manitobaine

to the incredible round table in which four provincial ministers took part, and to representatives of the Franco-Manitoban school division and the Collège universitaire de Saint-Boniface. Through them, we were able to gain some understanding of the trials and successes of French language education in my province.

I particularly want to point out the very high quality of the presentations by our witnesses, all the more remarkable since they had less than three weeks to prepare. Their presentations have better equipped our committee to pursue its study on education in French in a minority situation. Our committee is one more spokesperson at the federal level on behalf of the francophones of Western Canada. I thank you on their behalf.

[English]

VISIBLE MINORITIES

STUDY BY CONFERENCE BOARD OF CANADA

Hon. Donald H. Oliver: Honourable senators, in September I rose in this chamber to speak about a study on barriers to the advancement of visible minorities that the Conference Board of Canada has undertaken at my request. The project is more than a study. It is designed to put in place Canada-wide standards to ensure visible minorities have equal access to employment and senior management positions in both the public and the private sectors.

Today, I am excited to report that the project is entering the second phase of its mandate. This includes completing an analysis of the economic contributions of visible minorities in Canada, focus group sessions with visible minority citizens and recent immigrants, and case studies of exemplary national and international organizations whose policies and practices have successfully created inclusive work environments.

With the general support of both the public and private sector, the board has been able to complete an in-depth review of available literature and data on visible minorities. The screening process for the focus groups and interview guides for the case study are currently under way. The criteria for selecting the case study organizations are rigorous. Those chosen must show that their recruitment and selection techniques for employees are diversity-sensitive; there must be programs for promoting career development available for visible minorities; there must be a pronounced corporate commitment and involvement in the visible minority community; and managerial accountability must be seen when completing performance evaluations and putting training programs in place. Most important, the representation of visible minorities must be in line with the labour market availability, especially when considering visible minority representation in executive and managerial positions.

Honourable senators, the results from these lessons will provide the project with important guideposts towards solution-building in Canadian firms. Results will also be included in the employer's guide to best practices. It is expected that this portion of the mandate will be completed by the end of November. The final phase of the project includes a leadership summit.

Honourable senators, in my opinion, this is the most exciting and important study ever undertaken on behalf of visible minorities in Canada. Through the work of the Conference Board and the generous support of private and public sponsors, we are on our way to creating a more inclusive Canadian society.

ROUTINE PROCEEDINGS

PARLIAMENT OF CANADA ACT

BILL TO AMEND—REPORT OF COMMITTEE

Hon. Lorna Milne, Chair of the Standing Committee on Rules, Procedures and the Rights of Parliament, presented the following report:

Monday, November 3, 2003

The Committee on Rules, Procedures and the Rights of Parliament has the honour to present its

TWELFTH REPORT

Your Committee, to which was referred Bill C-34, *An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence*, has in obedience to the Order of Reference of October 27, 2003, examined the said Bill and now reports the same without amendment.

Your Committee notes that it instructed the Law Clerk and Parliamentary Counsel to make a clerical correction in the parchment, on page 14, in clause 12, on line 26, of the English version, by replacing the words 'Ethics Commissioner' with the words 'Senate Ethics Officer'.

Respectfully submitted,

LORNA MILNE
Chair

• (1410)

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

[Senator Oliver]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I move that Bill C-34 be placed on the Orders of the Day for third reading at the next sitting of the Senate.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: On division.

Motion agreed to, on division, and bill placed on the Orders of the Day for consideration at the next sitting of the Senate.

[Translation]

HAZARDOUS PRODUCTS ACT

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-260, to amend the Hazardous Products Act (fire-safe cigarettes).

Bill read first time.

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for second reading two days hence.

CANADA-JAPAN INTER-PARLIAMENTARY GROUP

TWENTY-FOURTH GENERAL ASSEMBLY OF ASEAN INTER-PARLIAMENTARY ORGANIZATION, SEPTEMBER 7-12, 2003—REPORT TABLED

Hon. Marie-P. Poulin: Honourable senators, I have the honour to present, in both official languages, the report of the Twenty-Fourth General Assembly of the Inter-Parliamentary Organization of the Association of Southeast Asian Nations held in Jakarta, Indonesia, from September 7 to 12, 2003.

OFFICIAL LANGUAGES

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE

Hon. Rose-Marie Losier-Cool: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Official Languages have power to sit at 5:30 p.m. today, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

[English]

[Translation]

The Hon. the Speaker: Honourable senators, is leave granted?

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I find myself in a difficult situation that I would like to share with my colleagues. The agenda of the committee, which I saw posted, indicates that a distinguished witness will appear before the committee, but that cannot happen for he will be otherwise occupied in the chamber. The committee will deal with a bill that I sponsored, and I thank the committee for its consideration of the proposed legislation. However, I find myself in a situation in which many honourable senators find themselves — having to be in the chamber and in committee at the same time.

My understanding is that the committee's time slot is when the Senate rises. Therefore, when the Senate rises, I will certainly come before the committee. I have reviewed the scroll with the Honourable Senator Robichaud, and we agree that we will have a full plate of business this afternoon. Knowing today's agenda, which includes a vote, I think it is safe to predict that we will still be sitting at five o'clock this afternoon.

The Hon. the Speaker: Leave is not granted, honourable senators.

NATIONAL SECURITY AND DEFENCE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING ADJOURNMENT OF THE SENATE

Hon. Colin Kenny: Honourable senators, I give notice that on Tuesday next, November 4, 2003, I will move:

That the Standing Senate Committee on National Security and Defence be empowered, in accordance with rule 95(3)(a), to sit during the adjournment November 17, 2003 and November 24, 2003, even though the Senate may then be adjourned for a period exceeding one week.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO DEPOSIT INTERIM REPORT WITH CLERK OF THE SENATE

Hon. Colin Kenny: Honourable senators, I give notice that on Tuesday next, November 4, 2003, I will move:

That the Standing Senate Committee on National Security and Defence be permitted, notwithstanding usual practices, to deposit an interim report on first responders that it may have ready during the adjournment, and that the report be deemed to have been tabled in the Chamber.

OFFICIAL LANGUAGES

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY FRENCH-LANGUAGE BROADCASTING IN FRANCOPHONE MINORITY COMMUNITIES

Hon. Jean-Robert Gauthier: Honourable senators, I give notice that, on Tuesday, November 4, 2003, I will move:

That the Standing Senate Committee on Official Languages be authorized to examine and report on the measures that should be taken to encourage and promote delivery of, and access to, as wide a range as possible of French-language broadcasting in Canada's francophone minority communities; and

That the said Committee report to the Senate on or before February 16, 2004.

Honourable senators, this is the third time in three years that I have made this motion; I am getting tired.

QUESTION PERIOD

QUESTIONS ON THE ORDER PAPER

REQUEST FOR ANSWERS

Hon. Pierre Claude Nolin: Honourable senators, my question is for Senator Robichaud, the Deputy Leader of the Government, who expressed the government's intention to answer written questions. There are many questions on the Order Paper that have been there since October 11, and they all involve the Alternative Fuels Act, which was passed by Parliament. These questions concern the Minister of Transport, the Deputy Minister of Transport and officials at the Department of Transport, the Minister of Intergovernmental Affairs, his deputy minister and officials at that department, and, finally, the Clerk of the Privy Council and Privy Council officials.

When does the Honourable Deputy Leader of the Government think we will have the answers to these questions?

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I will certainly bring your question to the attention of the Honourable Senator Carstairs, the Leader of the Government. I am certain she will see to finding out when we will receive the answers to these questions.

[English]

PARLIAMENT OF CANADA ACT

BILL TO AMEND—POINT OF ORDER— SPEAKER'S RULING

The Hon. the Speaker: Honourable senators, before proceeding to Orders of the Day, I would like to deal with the ruling in respect of committees sitting in consideration of Bill C-34.

Honourable senators will recall that last Thursday, October 30, Senator Kinsella rose on a point of order to complain about a meeting of the Standing Committee on Rules, Procedures and the Rights of Parliament earlier that day. The committee met at 10 a.m. to hear two witnesses on Bill C-34, which seeks to amend the Parliament of Canada Act for the purpose of establishing separate ethics officers for the Senate and the House of Commons.

• (1420)

Senator Kinsella's objection had to do with the fact that the committee meeting was outside of its usual time slot and that, as a consequence, none of the opposition members were able to fully attend the meeting because of conflicting schedules. The Deputy Leader of the Opposition claimed that what had occurred violated traditional practices, customs and usages of the Senate. In raising his point of order, Senator Kinsella urged me to take this into account and to find that the Thursday morning meeting of the Rules Committee was "illegally constituted."

[Translation]

Other senators spoke in favour of the position taken by Senator Kinsella. Senator Lynch-Staunton objected to the fact that all but one of the opposition members of the committee were not consulted about the Thursday morning meeting. As the Leader of the Opposition put it: "What we resent, and perhaps it is allowed by the rules, is that a committee chair, with the support of one member of the steering committee, can unilaterally disrupt the schedule of the committee and have it sit at a time of his or her choosing. Maybe that is done and can be done, but surely basic courtesy and our custom and hopefully respect for each other should not allow that to be done."

[English]

Honourable senators, Senator Cools also participated in the discussion on the point of order. Among the issues that the senator raised was the fact that, in her understanding, a committee can meet outside its agreed-upon time slot only by decision of the entire committee; it is not a decision that can be made by the steering committee alone. In separate statements, Senator Joyal and Senator Andreychuk objected to the difficulty they had in balancing their commitments to committees that meet at the same time. Such conflicts, they explained, made it impossible for them to meet their responsibilities effectively. Taking note of what had occurred last Thursday, Senator Andreychuk stated that, "The rules must be read in line with

what is fair, just and appropriate. The rules are not there simply to be taken advantage of." Senator Grafstein also expressed his discomfort with what had occurred. Finally, Senator Kinsella reiterated his view that I, as Speaker, need to take into account practice, custom and usage because not everything is captured in the *Rules of the Senate*.

Senator Carstairs, the Leader of the Government, and Senator Milne, the Chair of the Committee on Rules, Procedures and the Rights of Parliament also spoke to the point of order. Claiming that there was no point of order, the Leader of the Government took note of the fact that meeting conflicts are not uncommon, particularly when a great number of committees are sitting. Despite this reality, Senator Carstairs went on to explain that attempts are made to minimize these conflicts and to accommodate the interests of senators, especially early on when the Committee of Selection first establishes the membership of all standing committees. Nonetheless, as Senator Carstairs said, conflicts will inevitably arise due to a variety of factors; it is the nature of the parliamentary system. As the Leader of the Government explained in concluding her intervention: "The other side clearly does not like what happened. I can respect that they do not like it, but frankly that does not give them a point of order."

[Translation]

For her part, Senator Milne explained that the steering committee of Rules had been empowered by the committee to set the agenda and schedule hearings. This authorization, as the senator stated, did not restrict the committee to meet only within its allotted time slot. According to Senator Milne, the decision to meet on Thursday was made by the steering committee on Tuesday of last week though, unfortunately, it was not announced to the committee at its Wednesday meeting. Nonetheless, as Senator Milne pointed out, proper notice was given of the meeting and the *Rules of the Senate* were fully respected.

[English]

I wish to thank all honourable senators for their participation in the discussion that took place last Thursday. As you may recall, I left the Chair briefly following the exchanges on the point of order to consider my decision. I was prepared to rule on the question, but circumstances intervened to keep me from doing this. I have taken advantage of the additional time and am prepared to make my ruling now.

In considering my decision, I am mindful that I have been urged to take into account the customs, practices and usages of the Senate. I am asked not to rely exclusively on the *Rules of the Senate*. There is no doubt that our way of doing things in the Senate does not depend just on the written rules. What goes on here and how we work is due, in large measure, to cooperation, collegiality and mutual respect. The Senate traditionally prides itself on its ability to work through consensus when it can. Even when it cannot, it is rare for the Senate to give way to partisan bickering and harsh confrontations pitting the government against the opposition and possibly others, in some cases, in a show of force.

At the outset of his point of order, Senator Kinsella recognized the relative importance of practice in comparison to the rules. As he put it, "Unless there is an explicit rule to trump a practice, the custom must be respected." This is good advice, and I have tried to follow it. At the same time, I have noted that several senators, including both leaders, have recognized that no explicit rules of the Senate were violated when the Rules Committee held its meeting last Thursday morning. The issue, as Senator Lynch-Staunton said, is one of respect and courtesy, and this goes back to the usual approach that the Senate takes to conducting its business. As Speaker, however, I do not have the authority to impose cooperation. This is something that can only be achieved by senators themselves. Whatever the merits of the grievance, my task is to interpret the rules as best I can and to exercise what authority I have in the best interests of the Senate.

[Translation]

ORDERS OF THE DAY

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, under Government Business, I would like to call first Reports of Committees, Item No. 1, and then revert to the order in the Order Paper.

[English]

THE ESTIMATES, 2003-04

REPORT OF NATIONAL FINANCE COMMITTEE ON SUPPLEMENTARY ESTIMATES (A) ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Biron, for the adoption of the Ninth Report of the Standing Senate Committee on National Finance (*Supplementary Estimates (A) 2003-2004*), presented in the Senate on October 22, 2003.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I want to spend a little time on appreciation of the Estimates by continuing in the same vein as did Senators Comeau and Doody of when they commented last week on the difficulty in analyzing the Estimates, as much of the information in them is incomplete and even misleading. In addition, as was also pointed out, numerous departments and agencies can be involved in the same program; yet, that data is scattered throughout the Estimates book so that it is extremely difficult to get a true expenditure figure on many activities. I was encouraged last Thursday when the Leader of the Government in the Senate volunteered to write to the President of the Treasury Board to, as she put it, "add my voice to making these Estimates more user-friendly in the future."

• (1430)

Honourable senators are not alone, by the way, in having difficulty in understanding the Estimates as now presented. In a ruling on a point of order relating to them only a month ago, the Speaker in the other place ended his ruling by saying, "The issue underscores the need for Parliament to be presented with clear and complete information to fulfill its responsibilities."

To re-emphasize how important this is, let me cite one example and add it to those already mentioned by my colleagues.

Based on the arguments that were presented, there is no reason for me to intervene in this extraordinary way to nullify the proceedings of the Thursday morning meeting of the Rules Committee. Indeed, I do not believe that I have such authority. So far as I can assess it, there was nothing "illegal" about the meeting of the Rules Committee. The proper rules have been observed. Notice of the meeting was given and quorum was present. The opposition has indicated its objections, and several senators have complained about the conflicts that arose from simultaneous and overlapping committee meetings. Such conflicts are indeed frustrating and can lead to a genuine sense of grievance. However, there is nothing I can do as Speaker since the *Rules of the Senate* were not breached.

Comments have been made that the opposition whip did not consent to the Rules Committee meeting outside of its time slot. It has been acknowledged that the consent of both whips is usually obtained before a committee holds a meeting outside its usual time slot. This is a practice or custom that has been developed in recent years to accommodate the interests of the government and the opposition as well as senators generally. It is not a practice that involves the Speaker. I should also observe that it is not a practice that has been incorporated into the Senate's rules. The Senate has not sought to formalize this practice by making it part of our rules. It is thus beyond the scope of my authority to enforce.

As was mentioned last Thursday, committees are generally masters of their own procedures. Beauchesne's 6th edition, at citation 760(3) states that the Speaker of the other place has ruled many times "that it is not competent for the Speaker to exercise procedural control over committees." I feel that this is no less true here in the Senate, absent any violation of an explicit Senate rule.

There is, therefore, no point of order.

The Backgrounder, which is not part of the Blue Book, explains that the \$130.4 million for assistance to the Canadian softwood sector under the Industry Canada chapter is divided between the department itself, \$105.9 million, and the Economic Development Agency of Canada for the region of Quebec, \$24.5 million. In the Blue Book, the \$105.9 million is shown in one page, and the \$24.5 million on another. It takes a sharp eye to spot that both relate to the same program and, without the Backgrounder, it may have escaped even the sharpest of eyes.

As a matter of fact, a review of the Estimates since November 2001, only two years ago, when the Softwood Lumber Assistance Program was first mentioned, reveals that over \$250 million has been devoted to it, divided among International Trade, Natural Resources, Industry Canada and Foreign Affairs. As far as I can tell, the same program has been entrusted to these departments, and perhaps others but they have yet to be found if they are involved, without any visible coordination between them so that it is impossible to have the whole picture of how and where the funds for this one program are being spent.

This procedure is quite current. This way of reporting is also quite current. The upcoming Vancouver Olympics, for instance, to cite a most recent example, involves many departments, and there is no public document to which one can turn to for an immediate update on total government actual and projected spending on this activity.

Senator Doody last week mentioned the \$31 million in the Estimates identified as for "acquiring real property in Gatineau," by the National Capital Commission. No mention of the exact location or the purpose of the acquisition can be found in either the Estimates or the Backgrounder, which is a separate document and which, ironically, has more information in it than the blue book itself, although it does fail in this case to mention the NCC purchase. Only the questioning of Treasury Board officials produced some vague details. Why they could not have been included in the Blue Book is beyond me, particularly as the National Capital Commission has, for years, made no secret of having its sights on what is known as the Weston-Eddy property. Why not identify it as such in the Blue Book?

What is much more troubling is how the transaction evolved, as it is sadly but another example of Parliament, to put it bluntly, being used as a rubber stamp. Let me explain.

On June 18, 2003, Treasury Board approved the inclusion of \$31,122,885 in the Supplementary Estimates toward the acquisition. On June 19, the day after, an Order in Council authorized the purchase. As far as can be ascertained, no public announcement was made of that not negligible transaction until October 2, when the National Capital Commission held a press

conference announcing the acquisition of the industrial lands on the Quebec shore of the Ottawa River. The deed of sale had been signed the day before.

It will be argued that all this was done within long-standing practice, and I have no doubt that it was. Nonetheless, it is a practice which makes a mockery of what used to be one of the most if not the most important responsibilities of Parliament, in particular of the House of Commons, and that is having power over the purse. Of course, Parliament could refuse to vote the amounts already spent, which are just an advance by Treasury Board, but what should happen will not be allowed to happen. In any event, it begs the main question: Why was Parliament not at least informed that an agreement in principle had been reached before the deal was signed, sealed and delivered? Why was the \$31.1 million not included in the Main Estimates in March, as it is obvious from reading the deed of sale that it was a complex transaction that had to have been in the works for many months before?

This is but the latest example of reducing Parliament's role to that of a helpless spectator in an area where it once had significant authority. It may all be legal, but, to use a popular phrase these days, it certainly is not ethical.

On this question of advances by Treasury Board, the Senate Finance Committee studied the use and the scope of the activities funded through the contingency fund for many years and came out with a thorough analysis of the question in a report dated June 6, 2002. I recommend the report, because it is an excellent appreciation of the subject matter. I will limit myself to quoting only a few sentences, as they reflect very well the anxiety that all parliamentarians should be sharing. It is referring to the authority to advance funds by Treasury Board with reimbursement by the departments involved through the supply bill authorization.

Under this authority, it is possible for the Board to make expenditures on initiatives that never receive prior Parliamentary examination. Normally, if a Contingency Fund allocation is provided to a department for a non-paylist expenditure, then the department is required to reimburse the Fund through appropriations obtained in Supplementary Estimates. In this way, the expenditure is brought to the attention of Parliament, which then approves the spending retroactively when it passes the Appropriation Bill.

It is all there. Treasury Board advances, government spends and Parliament approves. In effect, those who have power of the purse are being told, "You better approve it because you have no choice. You have no idea what we were doing in the mean-time and how we got there, but the money is spent, and therefore you have no option but to approve it."

On numerous occasions, our committee has discussed with Treasury Board officials making contingency fund guidelines clearer and more in keeping with their original purpose. As the report notes:

The Auditor General observed that the wording of the Government Contingencies Vote is extremely broad, and that the Treasury Board Secretariat has not defined the words "miscellaneous, minor and unforeseen expenses not otherwise provided for" in any way. According to her, "This wording has provided the Secretariat with considerable latitude over the years in the way it interprets the spending authority." Furthermore, she noted that during the audit that led to her April 2002 report, it was found that even the analysts at the Secretariat had different views about the meaning of these terms. This latitude in the interpretation of the wording is a concern to some Senators. The Auditor General believes that this situation has given rise to government spending activity that has not received the approval of Parliament. During Committee hearings she stated that:

...government spending on grants, under interim authority from the Government Contingencies Vote, may be falling outside Parliament's intent.

That report ends by stating that Treasury Board is currently reviewing "its practices and guidelines..." and "...expects to announce any change in policy in the Autumn of 2002."

Here we are a year later, and we are still waiting.

[Translation]

Hon. Pierre Claude Nolin: Honourable senators, I wish to speak in this debate on the consideration of the Ninth Report of the Senate Standing Committee on National Finance, and more specifically on the deal between the National Capital Commission and Weston Ltd. concerning a property located in Gatineau. This property is easily identifiable; it is directly across the river. I think the NCC was right to have been considering acquiring this land for a long time. It is not very pretty to see a cultural symbol such as the Museum of Civilizations, and adjacent to it, this plant. This plant does provide employment to Quebecers in the area, but it is not aesthetically pleasing.

• (1440)

The NCC never made a mystery of its intention to acquire this land.

It is important, honourable senators, that we examine our role in this issue. We are being asked to concur in this report. I have some reservations. My reservations would not be as strong if there were agreement to put in a note or to take out of the report, or the Estimates, the appropriation of \$31 million that is sought for this transaction.

Treasury Board officials offered to provide information to the honourable senators who sat on the committee to clarify this transaction. This offer by Treasury Board Secretariat officials was important enough to be mentioned in the report. If I am not mistaken, clarification has not yet been given. We are being asked to concur in a report which leaves several questions unanswered.

This has prompted me to make personal inquiries. It turns out that the transaction in question has already taken place. The purchase was finalized in early October, and a receipt was issued at the time of the transaction. Funds in the amount prescribed have been transferred.

This sale is different from simple duly registered sales of real estate, which are commonly conducted in Quebec by notaries public. No warranty applies to this sale. Usually, in a real estate transaction, when the buyer offers to purchase a building without a warranty, questions about the vendor's liability are raised. These questions are necessary. When a buyer purchases a building that has had an industrial vocation since 1888, is it reasonable to claim that the buyer would agree to the purchase without the vendor having to provide a warranty?

Why did the NCC decide to purchase an industrial property without a warranty?

One other interesting fact: this transaction includes a usufruct. People will use this to try to impress us, because it means that the NCC will receive approximately \$28 million over the next 25 years. We are talking about a \$36 million transaction and a multiyear usufruct of approximately \$28 or \$29 million, which is not a huge risk.

So why was the building not transferred with the pre-existing condition on the title, meaning the 25-year lease — which was coincidentally renewed just a few months ago, between Weston and Scott Paper? Why did the NCC not simply purchase the lease too, rather than drafting an agreement to get back a portion of the investment over a period of time?

We are being asked to approve the main estimates and, more specifically, the allocation of funds to the NCC, although public servants have offered to clarify this transaction — which they have not yet done. We are being asked to have faith and to give our blessing, because the information will be provided at a later date.

In the event we concur in this report, the Senate will be seized with a bill asking it to concur in the main estimates. Are we going to obtain this information? Are we going to obtain the answers to these very troubling questions? I want to know why industrial property was purchased without a warranty. We have an idea as to why. We can assume that it is because of the possibility of industrial pollution, the need to decontaminate the site and make

a major investment to clean up this property along the Ottawa River. Who will pay to clean up this site? I and every other Canadian will have to pay the price, because this \$28 million usufruct will not cover all the costs related to the clean-up operation. Who knows, perhaps this site is not polluted.

Another piece of pertinent information: this property was the object of a memorandum of understanding seven years ago, in 1996. What information did the NCC possess in 2003 when it signed a document of sale as the purchaser, agreeing that the vendor would provide no warranties? What did it learn between 1996 and 2003?

Honourable senators, ultimately, this issue raises some questions. Questions will most definitely have be asked, not only of Treasury Board officials, but also of those who had information after 1996 — and prior to that date, in order to sign the 1996 agreement — until the present. This involves money from our taxes, and the taxes of our children and grandchildren. Is this our objective when we decide to do a conscientious job? Personally, if I am asked to approve a transaction without a warranty, it is my job to ask all the questions and get all the answers.

[English]

The Hon. the Speaker: If no other senator is rising to speak, I will ask the chamber: Are we ready for the question?

Hon. Senators: Question!

The Hon. the Speaker: It was moved by the Honourable Senator Day, seconded by the Honourable Senator Biron, that this report be adopted.

Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

Motion agreed to and report adopted, on division.

CRIMINAL CODE

BILL TO AMEND—MESSAGE FROM COMMONS— MOTION IN AMENDMENT—ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C.:

That, with respect to the House of Commons Message to the Senate dated September 29, 2003 regarding Bill C-10B:

(i) the Senate do not insist on its amendment numbered 2;

(ii) the Senate do not insist on its modified version of amendment numbered 3 to which the House of Commons disagreed;

(iii) the Senate do not insist on its modified version of amendment numbered 4, but it do concur in the amendment made by the House of Commons to amendment numbered 4; and

That a Message be sent to the House of Commons to acquaint that House accordingly,

And on the motion of the Honourable Senator Watt, seconded by the Honourable Senator Adams, that the motion, together with the message from the House of Commons dated September 29, 2003, regarding Bill C-10B, An Act to amend the Criminal Code (cruelty to animals), be referred to the Standing Senate Committee on Legal and Constitutional Affairs for consideration and report.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, this message from the other place has been with us for some time. We are somewhat puzzled to see the government effectively filibustering its own bill. However, these are unusual times. It is hard to know whether the senators on the other side are all rowing in the same direction. It seems that at times some are rowing to port; others are rowing to starboard. It is to be hoped that this bill is not a victim of lack of unity.

We have before us a motion in amendment by Senator Watt, and I support that motion in amendment. I would hope that we could at least make a decision on it soon. By “soon,” I mean today or tomorrow.

• (1450)

Hopefully, this is not being dragged out by the government because the government cannot make up its mind whether it is for or against the proposition.

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, Senator Kinsella has said the key word. I expect Senator Brydon to be able to speak on this “soon”. He has just arrived, so he will not be prepared until tomorrow. We will then be able to discuss the matter of the amendment.

[English]

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I would ask the deputy leader how he can reconcile refusing some of his own members the opportunity to speak to a government bill by imposing time allocation — a bill he strongly supports — with allowing senators against a particular bill you also support all the time needed to voice their opposition?

[Translation]

Senator Robichaud: Honourable senators, I have no comments to make on the statement the Honourable Senator Lynch-Staunton has just made. The process is continuing, as is the debate. Things are proceeding as they must.

Senator Lynch-Staunton: As they must, honourable senators, according to the deputy leader's interpretation of procedure.

[English]

Let it be noted that, whatever the fate of this message and the bill itself, the delay in taking a vote on both is not the responsibility of this side. The opposition wants to hasten a decision on it one way or the other. I will ensure that all the protestations that I have been hearing, particularly from those concerned with the cruelty to animals measures, are forwarded to the other side, where the blame continues to lie for not moving along with this.

[Translation]

Senator Robichaud: Honourable senators, I have no doubt that the Leader of the Opposition would do the same.

Order stands.

[English]

BILL RESPECTING THE EFFECTIVE DATE OF THE REPRESENTATION ORDER OF 2003

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Smith, P.C., seconded by the Honourable Senator Léger, for the second reading of Bill C-49, respecting the effective date of the representation order of 2003.

Hon. Terry Stratton: Honourable senators, I rise to participate in the debate on Bill C-49, to accelerate the implementation of new electoral boundaries.

Simply put, this bill advances to April 1, 2004, from August 25, 2004, the date for the new electoral map. New riding boundaries based on the 2001 census will take effect following the first dissolution of Parliament.

Before I turn to the main points I want to make, I should like to review some of the background pertaining to this proposed legislation. Honourable senators, after every decennial census, riding maps are redrawn to reflect population changes. As government background documents for Bill C-49 point out, redistribution is required by the Constitution Act, 1867, and by the principle of effective representation enshrined in section 3 of

the Canadian Charter of Rights and Freedoms. The legislative mechanism that underpins Canada's electoral redistribution process is the Electoral Boundaries Readjustment Act.

By this process, changes occur every 10 years, which include the addition of more seats for provinces that have grown significantly in population, and a redrawing of riding maps to reflect population shifts within provinces.

The process under the Electoral Boundaries Readjustment Act includes provincially-based federal electoral boundaries commissions responsible for holding public hearings to facilitate the redistribution process. The commissions, which are chaired by a judge appointed by the chief justice of each province, also includes two residents of each province appointed by the Speaker of the House of Commons. This commission can accept written submissions from the public over the course of their deliberations. As well, members of the House of Commons have an opportunity to have further input through an objections process coordinated by a parliamentary committee. However, final decisions with respect to the redistribution of federal riding boundaries are the responsibility of the commissions.

In making their decisions, the commissions are guided by a number of factors. For instance, except in exceptional circumstances, the population of each electoral district in a province must remain within plus or minus 25 per cent of the average provincial riding population for that province. As well, the commissions also have to consider issues like community of interest and historical patterns within an electoral district in coming to their conclusions. As the 1991 Royal Commission on Electoral Reform and Party Financing pointed out, adhering to criteria of this nature is designed to promote effective representation.

As to the assignment and the redistribution of seats nationally on a province-to-province basis, the Constitution reads that seats in the House of Commons must be assigned to the provinces on the basis of their proportionate populations. This is designed to ensure equality amongst voters. As the 1991 Royal Commission puts it:

Equality of the vote is secured if the assignment of seats to provinces conforms to the principle of proportionate representation and if the drawing of constituency boundaries conforms to the principle of representation by population.

Obviously, the extent to which each of these principles has been actualized in Canada has changed in accordance with the evolution of the mechanisms, both legislative and non-legislative, that have had a hand in determining electoral boundaries throughout our history as a country. I will come back to this point later, as it speaks to something I am particularly interested in — the relative under-representation of certain Western provinces.

For now, suffice it to say that, when the new boundaries in the current round of redistribution take effect, the number of seats in the House of Commons will increase to 308 from 301. Ontario will gain three seats, while British Columbia and Alberta will each have two more.

Under the Electoral Boundaries Readjustment Act, the new boundaries normally take effect for elections called one year after the boundaries are proclaimed. In the current round of redistribution, proclamation occurred on August 25, 2003. This means that, if there were to be a spring election, which is a key reason behind this government's introduction of Bill C-49, normally that election would be held on the basis of the old boundaries, while the new boundaries would be used if Parliament were dissolved on or after August 25, 2004.

The net effect of Bill C-49 is to move up the date when the new electoral map will take effect by five months, to April 1, 2004.

In bringing forward this bill, Don Boudria, Minister of State and Leader of the Government in the House of Commons, provided the following rationale:

This bill offers greater certainty that the next election will be held using the new electoral boundaries... It will enable all political parties, candidates, as well as Elections Canada to adjust to the new electoral map. Considered on their own, these appear to be laudable goals. However, the operative part of this sentence is "considered on their own."

• (1500)

While I do not want to get into a debate about the relative merits of the particular measure contemplated in this bill on its own, I do want to underscore one thing: contemplated as part of the larger attitude and approach of this government to the riding redistribution process — as evidenced by their record of tinkering on riding boundary redistribution issues — this bill confirms a disconcerting trend. That trend points to an attitude on behalf of this Martin-Chrétien government which seems to say that the riding boundary redistribution process is just another instrument of the federal government to be manipulated at the convenience of the government of the day; that measures and mechanisms in the Electoral Boundaries Redistribution Act are designed to ensure that predictability, reliability and smooth operation of the riding redistribution process can be changed on a whim — according to the governing party's often short-term political calculations.

This does not mark the first time that the Martin-Chrétien government has moved to alter the date on which redistribution takes effect. Unlike the two previous attempts, this bill advances rather than delays the implementation of new boundaries.

I am sure many honourable senators will recall that, back in 1994, many Liberal backbenchers objected when they saw the proposed new maps that followed the 1991 census. The response

of the government back then was to introduce Bill C-18, which would have thrown out the work already done on the redistribution process and suspend it for two years. The end result, if this self-serving and myopic piece of legislation had passed, would have been a 1997 election fought on boundaries drawn up some 16 years earlier.

At the time, we Progressive Conservatives had sufficient numbers in the Senate to amend Bill C-18. The practical result of our amendments was that the suspension period was reduced to one year from two, that the boundaries commissions were allowed to complete what was then the current phase of their work, and that after one year the boundaries commissions could continue their work from the point where it had been suspended.

A key objective of the Conservative amendments was that Bill C-18 could not have killed redistribution, and that an election called in 1997 would have to be fought, appropriately, on the basis of the 1991 census.

After failing with Bill C-18, the government subsequently tried to achieve the same objective of killing redistribution in 1995 through Bill C-69. As some honourable senators will recall, that bill died on the Order Paper when Progressive Conservative senators insisted on a proper examination of the bill and its related issues in committee.

As these illustrations underscore, this government's record on upholding the integrity and predictability of the electoral boundaries readjustment process is something one might not want to write home about.

That said, the issue of long term, well-thought-out changes to Canada's electoral boundary readjustment system is still one that should merit our ongoing consideration as federal legislators. In this regard, I would like to make a couple of points.

First, the fact that the government is trying to change the timeline from proclamation of new boundaries and the take-effect date in terms of a one-off deal perhaps points to the idea that the original one-year period might be too long under any circumstances. In other words, this issue of timelines needs to be considered independent of the perceived short-term electoral considerations which appear to be driving Bill C-49. I, for one, would not be adverse to seeing a permanently shortened timeline, especially if the Office of the Chief Electoral Officer can accommodate one.

Perhaps to avoid the need for such tinkering in the future, the consideration of a permanent change of the timeline between proclamation to take-effect date from one year to six months should be a part of the Electoral Boundaries Readjustment Act. This would be a reasonable amendment to the act. Anything that helps to speed up what is already a lengthy and somewhat cumbersome process should be welcomed.

The second and final point that I would like to make pertains to the current formula that is used to determine proportionate representation. The current formula was first established in the Representation Act, 1985. While the main purpose of this formula is to ensure the right of smaller provinces to proper representation at a minimum base, the fact remains that this formula shortchanges more rapidly growing provinces, such as Alberta, British Columbia and Ontario.

To quote from the 1991 Royal Commission on Electoral Reform and Party Financing, which is otherwise known as the Lortie report:

If current demographic projections are accurate, the application of the 1985 formula will increase the inequality among provinces over time because the size of the House can increase only to top up the seats of provinces that would otherwise lose seats. The formula is thus a recipe for increasing the inequality among provinces. Discriminating against provinces with populations that are growing relative to national population growth can only cause unnecessary friction within our country.

The Lortie report goes on to state:

In short, the formula errs in two ways: it fails to give sufficient weight to the constitutional principle of proportionate representation; and its restriction on increases in the number of Commons seats, which works to penalize the provinces experiencing population growth, is not related to any principle of representation.

As we engage in debate on this piece of legislation, I am of the view that we should not be adverse to highlighting areas where improvements to our entire process of electoral boundary readjustment can be improved. This would be helpful for future reference.

In regard to rapidly growing provinces, the perspective of Alberta's and British Columbia's relative under-representation in our national institutions is, additionally, coloured through a regional lens. Call it western alienation, or any other term used to describe perceptions that the West is disadvantaged in Confederation, the reality is that Western Canada has a long history of regional strain with the rest of Canada, and more particularly with the federal government. To quote from a recent survey put out by the Canada West Foundation regarding current attitudes in Western Canada:

The early years of the 21st century have witnessed the sporadic eruption of separatist parties, an ineffectual and frequently abrasive regional voice in the national Parliament, public arguments for provincial 'firewalls,' and seemingly endless radio programs, editorial commentary, and newspaper opinion pieces voicing regional discontent with the federal system and the federal government.

As well, the same Canada West Foundation document also includes a survey of western attitudes regarding how the interests of western Canadians are handled by their federal government. The survey discovered that:

The number of respondents feeling that their province is poorly or very poorly represented is striking: seven in ten western Canadians do not feel the interests of their province are adequately represented at the federal level.

These are important points to consider as these perceptions speak to the legitimacy of our federal government, our federal institutions and our current system of representative democracy.

I give as an example Manitoba, which has a population of 1 million people. In Manitoba, there are 14 seats, or roughly 70,000 people per riding. It would be interesting to know, and I am sure we will find out in committee, what the populations of Alberta and British Columbia are versus their numbers of seats. In 1991, the representation per riding in Alberta and British Columbia was 25,000 people more per riding than it was in Saskatchewan and Manitoba. This is a substantial change that has probably become worse. Thus it is not a question of increasing the number of seats in Alberta and B.C. by two; we should be increasing their numbers by even more than that.

• (1510)

The Hon. the Speaker: I am sorry to interrupt the honourable senator, but I must advise that his time has expired.

Senator Stratton: I request leave to continue.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Stratton: Honourable senators, Canada's next Prime Minister has stated that he is interested in addressing both western alienation and Canada's democratic deficit. The evidence suggests that he has his work cut out for him. Certainly, reviewing any imbalances in Canada's electoral boundary redistribution formula would be a productive initiative for the incoming Prime Minister, but not the only one. Rather, it should be considered as one part of the overall policy mix that has to be promoted if this government is serious about addressing both this so-called democratic deficit and western alienation.

In fact, in addition to adopting the changes about a six-month time line for the establishment of new boundaries, the reviewing of the electoral boundary readjustment formula is one initiative that I would welcome.

In closing, the key objectives of Canada's system of electoral boundaries readjustment are to promote both the equality of the vote and effective representation. These are ongoing principles that we as legislators must strive to uphold.

I am glad to have had the opportunity to speak to these issues in the context of discussing the change contemplated in Bill C-49.

On motion of Senator Stratton, for Senator Di Nino, debated adjourned.

APPROPRIATION BILL NO. 3, 2003-04

SECOND READING—DEBATE ADJOURNED

Hon. Joseph A. Day moved the second reading of Bill C-55, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004.

He said: Honourable senators, Bill C-55, now before us for consideration, will be cited as the Appropriation Act No. 3. The first step for me in looking at this appropriation bill was to compare it to the Supplementary Estimates, and in the Supplementary Estimates there is a proposed schedule for the appropriation bill. I have compared the proposed schedule of the Supplementary Estimates to the schedule attached to Bill C-55, and I find them to be the same.

The proposed schedule in the Supplementary Estimates is part of the documentation that the Standing Senate Committee on National Finance reviewed. It formed the basis of the ninth report of the committee, which report was adopted on division a few minutes ago, so I do not propose to go through an analysis of all those figures again.

I should like to thank all honourable senators who participated in the debate on the adoption of our report. I can assure them that their comments will be given consideration as we continue throughout the year to study and, hopefully, improve upon the Estimates brought before the committee by Treasury Board.

Supplementary Estimates (A) and Appropriation Bill No. 3 seek approval by the government for \$5.5 billion of expenditures. These are votable appropriations for the balance of fiscal year 2003-04.

The \$5.5 billion is part of the \$180.7 billion of planned expenditures by this government for this fiscal year. It is not an additional amount; it is only that the details were not sufficiently known in order to deal with it when we had before us Appropriation Bill No. 1 and Appropriation Bill No. 2. These Supplementary Estimates are still within the overall planned expenditure.

Honourable senators, I respectfully request that you support this appropriation bill at second reading.

[Translation]

Hon. Pierre Claude Nolin: Honourable senators, let us stay on the subject of principles. Will the arguments raised by the various senators who have discussed the ninth report be taken into

consideration during the clause-by-clause study in committee of this bill we are being asked to approve at second reading?

Senator Day: The procedure for a bill for granting to Her Majesty certain sums of money for the public service of Canada, is usually that the bill is not referred to committee. We have already done our study. These are the same schedules as in the supplementary estimates. These points of view will be considered, because in our mandate we continue to study the estimates throughout the year.

Senator Nolin: I asked the question as a matter of principle. Other people may have other opinions, but personally, I think it is very important to have the public servants explain why we should vote this additional \$5 billion or so, especially if these public servants offer to enlighten us, to provide further information, so that this decision can be made in full knowledge of the facts, when they give us their information. Would it not be appropriate to reopen the study of the supplementary estimates, to hear the public servants, and perhaps look at the relevant documents?

That is why I asked the question. Your answer is that there will be no examination in committee. Do you think it is fair and reasonable, despite all the arguments that were raised, that we do not go back to committee at least to examine these questions in the light of the offer made by the public servants?

Senator Day: I agree; it is very important, in principle, to have information. We are continuing to improve the situation with the witnesses we are hearing. Still, for these Supplementary Estimates (A), we have included our comments in the report. We have enough information to proceed with these supplementary estimates and this bill.

Senator Nolin: Please permit me to use, although not exactly, as I am not reading them, the words you used in your own report. "We recognize that we do not have all the necessary information," you said, and you wrote it in your report.

• (1520)

I am offering you an opportunity to reopen, on this issue at least — and on others that were raised — the examination of witnesses, to at least be consistent with what you wrote in your report. My understanding is that the committee will continue to review the Main and Supplementary Estimates of the government, and that is good. We are trying to be effective. You have here officials who answered your questions and realized that we did not have all the information; they offered to provide additional information, but their offer was not even accepted. Where are we going?

Senator Day: Honourable senators, the committee decided it had enough information to write the report. That is what it has done; we have discussed the report and voted on the report that was concurred in by the Senate.

[Senator Stratton]

[English]

Hon. C. William Doody: Honourable senators, this matter is not finished before the committee. Once the Finance Committee has a set of Estimates before it, those Estimates stay before the committee until they are reported finally at the end of the fiscal year. There is another set of Estimates that appear on the scene miraculously, mysteriously from the nether regions of this place, and we are given another year's opportunity to read and digest the indigestible. This matter is not finished at all. It will be pursued, chased down and studied further by this committee.

In the 25 years that I have been associated with the Finance Committee, in addition to the approximately 10 years that I spent with the finance department and the treasury board of the Government of Newfoundland, I have never seen a set of Estimates that were so difficult to digest as this particular set this year. I still have no idea, really, as to the ultimate cost of this gun registry. There are other strange and mysterious items in the sups that have not been fully explained. It is fair to assume that this committee will further pursue these questions when Treasury Board officials appear before us again, as they will.

It has not been the tradition of this house to debate the appropriations bill. It has been our understanding that the appropriations are the responsibility of the House of Commons and that we study the Estimates and offer suggestions for improvement, although I have been tempted from time to time to offer an amendment to an appropriations bill just to see if anyone in the House of Commons would notice. They spend so little time attending to their major responsibility. Their responsibility, first and foremost, is to protect the taxpayers' dollars, and they spend less time examining the Estimates and the spending policies of any particular government — not just this government, in my experience — than we do here.

While our contribution in examining the Estimates and the Supplementary Estimates is relatively insignificant in terms of the amounts of money involved, it is still far more significant than that put forward by our colleagues on the other side.

Maybe one of these days I will offer an amendment to see what happens. I suspect that someone at the table will alert them in the House of Commons that there is an insidious little trick to see if they are still awake. Up to this point, we do not get involved in a major debate on the appropriations, as such.

With some reluctance, I finish my few comments on this matter and leave it to the disposition of the Senate to see whether or not they will approve.

Senator Nolin: If the Honourable Senator Doody would allow, I have a few questions. Was the honourable senator aware that he

was asked to approve the financing of the acquisition of a piece of land without guarantee?

Senator Doody: The situation of the acquisition of the land across the way has been a mysterious item from the beginning. In the Estimates, the only information we were given was that \$31 million was requested for the acquisition of land in Gatineau. Further information was not available, nor did the officials at the time have it. They subsequently found some explanations and provided letters of correspondence from the Chairman of the National Capital Commission to the Treasury Board. However, no, the guarantee item, to my knowledge, did not enter into the conversation. The matter was still not resolved to my satisfaction at the time the debate ended. I have every intention of raising it again at another meeting of the committee.

Senator Nolin: Would the honourable senator agree that the lack of information should at least raise questions and deserves clarification? Does he think that his committee or this chamber has the power to stop the transaction?

Senator Doody: Honourable senators, that has not been the responsibility of the committee — and it is not my committee. I am a member of it. We try to find out as much as we can within the limited time available to us. When we walk away from the table, I do not pretend that the transactions approved by the myriad bureaucracy that governs this country have been resolved to the ultimate satisfaction of every member of the committee.

I do say, as I have before, that the transaction by the National Capital Commission was not satisfactorily explained to us, and I fully expect that we will be addressing the matter again. However, there are many other items in these Estimates and in previous Estimates that were not satisfactorily explained to us, and we continue to try to get to the bottom of things. We do have limited time, resources and authority, but we try to exercise those facets to the best of our ability.

Senator Nolin: The answer of the honourable senator confirms the complaints about missing information contained in the report. Would the honourable senator agree that it would be reasonable to reopen the study done by the committee and to listen to the various representatives of the Treasury Board Secretariat and hopefully from the National Capital Commission? If I were to offer information that an MOU was signed in 1996 on the acquisition that the NCC was part of, an MOU showing that the transaction was already done and goes back to early October of this year and there is no guarantee, would that be of importance? Maybe it would be of importance to know what was learned from the NCC's representative between 1996 and when they signed the deed of sale. Does the honourable senator not think it would be reasonable to reopen the discussion with those representatives of the executive?

Senator Doody: Honourable senators, I have already said on at least two occasions in the past 10 or 15 minutes that we are prepared to look at the question again and get more information. I do not know that I can say anything further. The National Capital Commission is an autonomous organization that holds itself proudly and arrogantly at arm's length from the government and certainly from Parliament in terms of providing information and cooperation at any given time.

Senator Nolin has every right to attend every meeting of the National Finance Committee that he wishes, and he is entitled to ask the officials of Treasury Board any questions that he wishes. He does not need my authorization or invitation. He has the same privileges as every other senator in this house. As far as I am concerned, I would be delighted to see him at National Finance Committee meetings.

On motion of Senator Lynch-Staunton, debate adjourned.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, it being 3:30 p.m., pursuant to the order adopted by the Senate on October 30, 2003, I must interrupt the proceedings to put the question on the motion in amendment of the Honourable Senator Oliver to Bill C-25.

The bells to call in the senators will be sounded for 30 minutes. The vote will take place at 4 p.m.

Call in the senators.

• (1600)

PUBLIC SERVICE MODERNIZATION BILL

THIRD READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts.

And on the motion in amendment of the Honourable Senator Oliver, seconded by the Honourable Senator Robertson, that the Bill be not now read a third time but that it be amended

(a) in clause 2

(i) on page 88, by replacing lines 37 to 40 with the following:

“(2) The Canadian Human Rights Commission may deal with an issue referred to in subsection (1), if it is of the opinion that it is in the public interest to do so, as if the issue were a complaint under the *Canadian Human Rights Act*, and the adjudication proceedings shall be suspended on the request of the Canadian Human Rights Commission.

(3) If the Canadian Human Rights Commission does not decide to proceed with the issue as a complaint under the *Canadian Human Rights Act* within 30 days after the adjudication proceedings are suspended, the adjudication proceedings shall be resumed.”

(ii) on page 91, by replacing lines 9 to 12 with the following:

“(2) The Canadian Human Rights Commission may deal with an issue referred to in subsection (1), if it is of the opinion that it is in the public interest to do so, as if the issue were a complaint under the *Canadian Human Rights Act*, and the adjudication proceedings shall be suspended on the request of the Canadian Human Rights Commission.

(3) If the Canadian Human Rights Commission does not decide to proceed with the issue as a complaint under the *Canadian Human Rights Act* within 30 days after the adjudication proceedings are suspended, the adjudication proceedings shall be resumed.” and

(iii) on page 92, by replacing lines 26 to 29 with the following:

“(2) The Canadian Human Rights Commission may deal with an issue referred to in subsection (1), if it is of the opinion that it is in the public interest to do so, as if the issue were a complaint under the *Canadian Human Rights Act*, and the adjudication proceedings shall be suspended on the request of the Canadian Human Rights Commission.

(3) If the Canadian Human Rights Commission does not decide to proceed with the issue as a complaint under the *Canadian Human Rights Act* within 30 days after the adjudication proceedings are suspended, the adjudication proceedings shall be resumed.”; and

(b) In clause 12, on page 139, by replacing lines 1 to 4 with the following:

“(6) The Canadian Human Rights Commission may deal with an issue referred to in subsection (5), if it is of the opinion that it is in the public interest to do so, as if the issue were a complaint under the *Canadian Human Rights Act*, and the proceedings before the Tribunal shall be suspended on the request of the Canadian Human Rights Commission.

(6.1) If the Canadian Human Rights Commission does not decide to proceed with the issue as a complaint under the *Canadian Human Rights Act* within 30 days after the proceedings before the Tribunal are suspended, the proceedings before the Tribunal shall be resumed.”.

The Hon. the Speaker pro tempore: The question is as follows: It was moved by the Honourable Senator Oliver, seconded by Honourable Senator Robertson:

That the bill be not now read a third time but that it be amended (a) in clause 2...

Shall I dispense, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker pro tempore: All those in favour of the motion in amendment will please rise.

Motion in amendment negatived on the following division:

YEAS THE HONOURABLE SENATORS

Andreychuk	LeBreton
Atkins	Lynch-Staunton
Beaudoin	Meighen
Di Nino	Nolin
Doody	Oliver
Forrestall	Prud'homme
Johnson	Rivest
Kelleher	Robertson
Keon	Spivak
Kinsella	Stratton—21
Lawson	

NAYS THE HONOURABLE SENATORS

Adams	Joyal
Bacon	Kenny
Banks	Kolber
Biron	Kroft
Bryden	LaPierre
Callbeck	Lapointe
Chalifoux	Lavigne
Chaput	Léger
Cook	Losier-Cool
Cools	Maheu
Corbin	Mahovlich
Cordy	Merchant
Day	Milne
De Bané	Morin
Downe	Pearson
Fairbairn	Phalen
Finnerty	Plamondon
Fraser	Poulin
Furey	Poy
Gauthier	Ringuette
Gill	Robichaud

Grafstein
Graham
Harb
Hervieux-Payette
Hubley

Rompkey
Smith
Sparrow
Trenholme Counsell
Wiebe—52

ABSTENTIONS THE HONOURABLE SENATORS

Roche—1

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, we have just voted on a motion in amendment to Bill C-25. We could revert to the Orders of the Day and call Item No. 2, resuming debate on the motion for the third reading of Bill C-25.

[English]

Hon. Senators: Question!

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, my understanding is that the vote we just conducted was on the motion in amendment by Senator Oliver. We have yet to deal with the main motion.

The Hon. the Speaker pro tempore: Are honourable senators ready for the question?

Hon. Anne C. Cools: Honourable senators, I understand now that we are back to the main motion.

Some Hon. Senators: Yes.

Senator Cools: I wish to speak to this tomorrow, so I would move the adjournment of the debate.

On motion of Senator Cools, debate adjourned.

[Translation]

PUBLIC SAFETY BILL, 2002

SECOND READING—ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C., for the second reading of Bill C-17, An Act to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety.

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I know the Honourable Senator Lynch-Staunton has indicated his intention to speak to this bill at second reading prior to November 7. I would just like to encourage him to do so earlier than that, if possible, because we are anxious to hear what he has to say.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I am equally anxious to hear what Senator Bryden has to say about Bill C-10B.

Order stands.

NATIONAL ANTHEM ACT

BILL TO AMEND—THIRD READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Poy, seconded by the Honourable Senator Milne, for the third reading of Bill S-3, An Act to amend the National Anthem Act to include all Canadians.—(*Honourable Senator Cools*).

Hon. Gérard A. Beaudoin: Honourable senators, I wish to support Bill S-3, proposed by the Honourable Senator Vivienne Poy, in which she proposes an amendment to the National Anthem.

• (1610)

As I have said in the past, it is true that we cannot change or rewrite history. Naturally, we must respect authors' works. However, in this case, we are going back to the first version by the author himself. We are going back to words he chose in the very beginning and wrote down. That is the only reason I support this bill.

In addition, the first version better reflects the principle of gender equality, a principle that we enshrined in the Charter of Rights and Freedoms in 1982. Gender equality is one of the greatest outcomes of the 20th century. That is when we started to give men and women the same rights in our constitutions and legislation. It has taken centuries for this equality to be accepted.

The 1948 Universal Declaration of Human Rights recognizes this equality, and section 28 of the Charter of Rights and Freedoms is one of the gems of our Charter. It reaffirms this equality. That is the reason for my full support.

In conclusion, I would like to make it clear that this bill deserves to be passed.

On motion of Senator Lapointe, debate adjourned.

HOLOCAUST MEMORIAL DAY BILL

SECOND READING

On the order:

Resuming debate on the motion of the Honourable Senator Poulin, seconded by the Honourable Senator Fairbairn, P.C., for the second reading of Bill C-459, An Act to establish Holocaust Memorial Day.—(*Honourable Senator Prud'homme, P.C.*).

Hon. Marcel Prud'homme: Honourable senators, I had indicated my intention to speak to this very important motion. I was waiting for the Honourable Senator Fairbairn to speak, since she seconded the motion. However, I see that Senator Fairbairn is undoubtedly busy with another bill. I would like to hear what the honourable senators have to say about this very important issue. We see that discussions were held between a few of the honourable senators.

Of all the crimes against humanity during the 20th century, it is difficult to pick one as the most horrible. An author once said that one crime is too many. A death is a death. But the horrible crime of the Holocaust cannot remain unknown and cannot be pushed aside. This crime must not disappear from humanity's memory and consciousness.

As always, some parliamentarians have the knack of sabotaging the most worthy causes brought before their colleagues. Whether by intrigue, or the silence or ignorance of some parliamentarians toward others, they try to get quick passage, without providing enough information to the all members, of some issues that should have been debated thoroughly before a vote.

Honourable senators, let me tell you about some events, and I shall leave you to think about them.

I dedicate my words today to a very good friend in Montreal; she is Jewish. Since I do not want to embarrass her, I will just call her my dear Jeannette. She is very well known to some of my Montreal colleagues. She is very active and vigorous and she gave me some pointers for the Standing Committee on Banking, Trade and Commerce, saying that I should oppose the bank mergers.

Honourable senators, here is how it happened, as always, in the House of Commons, in the most stupid, expeditious way, when only a few members are let in on the secret to discuss an issue.

One morning at 10 a.m., the hon. member for Brossard rose and said: "It is with deep emotion that I move this motion: that the member for Charlesbourg-Jacques-Cartier may immediately introduce a bill entitled 'An Act to establish Holocaust Memorial Day,'" and for such a monstrous event as the Holocaust, he added, "and a member from each party may speak to the bill for no more than two minutes, following which the said bill shall be deemed to have been read a second time, referred to and reported from committee, concurred in at the report stage and read a third time and passed."

That is how, in a hurry, without consulting the members of the House of Commons, they passed a bill commemorating one of the most atrocious tragedies, one of the most sickening and disgusting events of the 20th century.

• (1620)

In the House of Commons, they wanted to trivialize it, spring it on Parliament and rush it through, when every member of the House and of the Senate should have been informed of what was to come.

This is not the first time. The same tactics were used in 1985. This is not the way to proceed. A great Quebec linguist told me that it was better to use the word trivialize instead of minimize. And suddenly, in great haste, as if to do something behind our backs, five members rise and each is entitled to speak for two minutes only. We are told not just that things are going well, but that an agreement has already been reached. Senators Jerahmiel Grafstein and Noël Kinsella undertook to ensure speedy passage of the bill in the Senate. I thank you, Senator Kinsella, for informing the Senate. However, the House of Commons is already aware that an agreement has been reached. It is in this context that the unfortunate incident occurred last week.

The bill was presented by neither Senator Grafstein nor Senator Kinsella, but rather by Senator Poulin, seconded by Senator Fairbairn. An attempt was made to name a whole series of senators who supported the bill, when this was not necessary. I could give the Senate all my notes.

How could serious, caring individuals have attempted once again, to our general surprise, to trivialize the most horrible, monstrous, but undoubtedly the most infamous and organized event of all time: the Holocaust.

We were not advised that the House of Commons held a similar debate in April 1996. No senator is aware of that fact. In 1996, the House of Commons held a similar debate on the Armenian genocide — which cannot be called a Holocaust. After very extensive negotiations between the Armenians and the Canadian Jewish Congress, an agreement was reached.

[English]

April 20 to 27 of each year was identified as the week of remembrance of the inhumanity of people towards one another. A remembrance time exists already. It is not only a day of remembrance, but a full week. People seem to have such short memories.

When will the next surprise occur, with only a few here in the chamber having knowledge? Once it is decided, who will then oppose it?

Honourable senators, I reject that way of proceeding. I find that is not acceptable. I find that that is the most ill-advised way of proceeding when we want to attract the attention of all the honourable senators and members of the House of Commons.

I have nothing against those five members who arrived at the House of Commons at ten o'clock one morning. Honourable senators know how it works at the other place. People were coming in — and the debate was already over, because five people were in agreement. The member from Brossard was in charge of the House at the time. He told the house that no one would have permission to speak for more than two minutes, and that the bill had already been accepted in the Senate.

How many more times will we trivialize one of the greatest crimes against humanity? If you touch one hair of a person's head because of his or her religion, colour or sexual orientation or political affiliation, you touch me first.

That is the reason that I have always stood on this question, especially, side by side with those who want to remember. I know that other honourable senators have great causes to bring to our attention, so I would hope that they would not proceed in the way they did in the House of Commons. On a question of that kind, you circulate ahead of time your intention to ask for support to have a national day of commemoration, to pray together or to remember together a particular event in order that people may be emotionally prepared to speak intelligently.

[Translation]

They could speak about this issue in French, English, Yiddish or German. The date of this memorial day will change from year to year. We are leaving it up to someone else to decide what day that will be. From an educational point of view, and as a Canadian, I would prefer it to be the same day every year.

This was not mentioned in the bill. We are leaving it up to others. I have no objections, but for people who like to talk to students in colleges and universities, it much easier to tell young people that there will be a memorial day every year on a specific date.

For instance, February 15 is Canada's national flag day. I am the only one here who voted for Canada's flag. I could talk to you about this at length. I attended this event on February 15, 1965. The vote had been held in 1964. The only survivors of that great event are Jean Chrétien and I.

Perhaps in wanting to go too fast, we are leaving it up to others to decide, while it should be the responsibility of the Government of Canada, the Department of Canadian Heritage, to set a date for us to commemorate the Holocaust. I will discuss it with Senator Grafstein and others who know more about this than I do or who are more directly affected. But I do not want anyone to say: "I am more directly affected."

[English]

Honourable senators, I ask leave to finish in a positive way. I do not see any disagreement.

The Hon. the Speaker *pro tempore*: Is the Honourable Senator Prud'homme requesting leave to continue?

Senator Prud'homme: Honourable senators, I ask for leave.

The Hon. the Speaker *pro tempore*: Honourable senators, is leave granted?

Hon. Senators: Agreed.

Senator Prud'homme: People such as Senators Grafstein, Kroft and Austin say that we must have close cooperation. It touches us all. We must unite. On that day we should all say, "Today, I feel as one of the Jewish faith." I want to show the rest of the world that I thoroughly exercise my sincerity by standing up, by praying, or by attending any commemoration that would take place."

• (1630)

That is Prud'homme. That is the way I always said we should proceed, but people refuse to proceed that way, which annoys me. Only very few would know. It is a bit like when we made Mr. Mandela an honorary citizen of Canada. Who could be against that? As long as everyone knows, everyone will participate. What a great day it was. It was well planned. The House of Commons knew; the Senate knew. The Prime Minister and everyone were there to sign when he became an honorary Canadian. That is the way to proceed. That is the way they have proceeded in the United States, where they only have two honorary citizens, Winston Churchill and Raoul Wallenberg. It was done very well, with everyone knowing and everyone participating.

I do not know how we will dispose of this bill. If it could be bona fide, I will certainly be attending and helping those who have put it in front of us, these members of the House of Commons and those who participated with them, because there would be a time where we will need to know how to proceed.

Have you noticed, honourable senators, that it is always the same debate? When we proclaim a national day, someone comes in, bang boom, and it is finished. This is what I called trivializing.

I will vote in favour of this bill. I do not understand the excitement I saw in the last two weeks, the nervousness of some senators, as if they thought I would vote against the bill or organize a cabal. One would have to be sick to organize a cabal against a bill such as this one. What some of us despise is the secrecy surrounding all of this. I see my good friends smiling.

[Translation]

Honourable senators, my friends say that I was probably right, we should have done things differently. I would have been honoured, had I known ahead of time, to be one of those who will

participate in creating this day that I am certain will come about. I can think of other personalities we could invite, such as General Dallaire.

Why do we say never again when tragedies of this kind are increasingly frequent? Just look at Rwanda. I will give my support when the time comes, but calmly and not in a rush.

[English]

Hon. Laurier L. LaPierre: Honourable senators, I rise to support of this bill because I wish to expiate the ignorance of my youth. I rise to support it because I see in it a statement or a symbol of all the people who have suffered through the century through which I have lived.

I was 16 or 17 years old when the Second World War ended in 1945, and I had never heard of the Holocaust. I had never heard of people being thrown into the ovens, and I had never heard that an entire people were being killed for no other reason than that they were Jewish. In the convents, I prayed for Franco and Salazar and Mussolini so they would keep communism away, but I never prayed or was asked to pray for any of the people who were being killed.

I see in this bill an expiation of my silence in my youth. I should have known and I should have spoken out, but I did not. Granted, I have not stopped talking about it since then, but this has given me an opportunity to —

[Translation]

I would like to ease my mind of this great burden, which has been on my conscience since I was 15.

[English]

As well, I see in this bill a symbol. Of course it is the Holocaust, but to me, and I suspect to the young people who were then there and did not know, the Holocaust has become a statement or a symbol of man's inhumanity to each other. I have begun to read Dallaire, whom I have interviewed over the years several times, and I was always in tears at his great pain and horrendous anxiety. That to me is another kind of Holocaust, but it is not the Holocaust that we are talking about, but it is in my heart. This memorial day will make it possible for me to be able to say that every day, with every year, on a special day, we will remember those events. We will swear and tell our children and our grandchildren that they must never, never happen again. If we do not remember, they are bound to happen again.

I see no conspiracy in this bill at all. I thank Senator Poulin and Senator Grafstein and everyone who has been involved because they have given me the great opportunity that I have wanted for many years now.

[Translation]

Hon. Pierre Claude Nolin: Honourable senators, I support the principle of this bill. Senator LaPierre has expressed better than I can the significance and solemnity of this Parliament's establishing this memorial day. It is because of a lack of information at the time that the honourable senator is today making an act of contrition, much to his credit. I imagine that the honourable senator is making it on behalf of all Canadians who, like him, were unaware of what was happening.

Honourable senators, I want to share with you how uncomfortable I feel about recent debates I have read and heard concerning this memorial day. If the rumour is true, it is sad to think that we are discussing such an important piece of legislation at the last minute.

We want to educate our children about how terrible this policy, this systematization of murder, this planned horror was, not only to perpetuate the memory, but also to ensure that such atrocities are never allowed to be committed again. I would have liked, as part of this solemn debate, for us to seriously acknowledge other events which, despite all our good faith and the horror of what we are asked to commemorate, nevertheless took place later before the eyes, so to speak, of the whole planet; in the case of Rwanda for example, the atrocity of the events was reflected in daily newscasts.

I would have liked to see serious reference to that in our consideration of the bill. I would have liked us to discuss the genocide in Timor. I would have liked us to remember the events that took place in the Ukraine. I have the feeling that I will be covered with opprobrium if I dare comment on the crafting of the bill. It refers to what we should do to avoid a recurrence of such horrors.

• (1640)

Why should the House of Commons be the only one invested with this noble responsibility to ensure that this never happens again?

As a parliamentarian, I feel I must speak out. Why so? Unfortunately, I have the feeling that I am going to be ostracized for suggesting that this measure, important and solemn as it is, is unfortunately incomplete. Yes, six million Jews lost their lives between 1939 and 1945, as the result of systematic serial murder. Unfortunately, others were also victims of this collective elimination as well: I am thinking of the infirm, to which there has been a small reference, but also the Czechoslovaks, the Poles, and the Romany.

I do not want to see us forced, just because we are in the last gasps of a Parliament or a parliamentary session, to bow to moral suasion and say yes to a text I feel is incomplete. This document

has some shortcomings that ought not to be left in it. It is too important. I want to be able to tell my children: "This is what I voted on." That is the duty I have set myself. That is what I want you to know.

I hope I have just got the wrong impression. We are at second reading stage and, if we are able to correct the text, we have a duty to do so. This bill has some shortcomings and we have an absolute duty to try, in the short time left to us, to produce something as close to perfect as possible.

[English]

Hon. Joan Fraser: Honourable senators, I had not intended to speak on this bill, which I strongly support, but some things that have been said here today lead me to think that perhaps I should put my own thoughts on the record.

I support this bill, in principle and in detail, and I think it is appropriate for us to establish a Holocaust memorial day and not a genocide memorial day, not because there have not been other genocides — there have been, in our lifetime — but because the Holocaust is overwhelmingly different and worse. It is not different because the horrifying majority of its victims were Jews, because genocides, by definition, are attempts to eradicate a people. The difference is where it happened and the lesson that we can and must draw from that.

When we contemplate Rwanda, when we contemplate the Armenian genocide, when we contemplate Cambodia and when we contemplate the Ukraine, we can comfort ourselves by saying, "Oh, but those places are not like Canada." We can pass by on the other side of the street and feel, in some way, unaffected. I think, in fact, that Canadians do carry a justifiable sense of guilt about Rwanda, thanks largely to General Dallaire. We do not, I think, carry any such sense of guilt or any particular sense of lessons learned about the other horrible events.

Why do we need to pay special attention to the Holocaust? We need to do so because we must remember that it was not Jews, gypsies, homosexuals, the mentally handicapped or political dissidents who did it. They were not the people who passed the laws, who designed the system, who built and supplied the industrial installations created for the sole purpose of murder. The people who did that were the government and citizens of one of the greatest, most civilized countries the world has ever known. Germany was a beacon of civilization for many of the preceding centuries. One need only visit Berlin to realize what a great world centre it was — a country with universities to which people from all over the world, including Canada, went to become more civilized, to become philosophically richer and deeper. The point is that if they could do it, anyone can do it.

There is no excuse. There is no way to say, "Oh well, we are not like that. We need never worry." We all need to worry, always. We all need to carry with us, always, the consciousness that any society can fall into terrible paths of evil if it is not eternally vigilant.

That is why I think it is appropriate to have a Holocaust memorial day, and I think it is appropriate to fix the date of that day, as this bill would do, in honour of the fact that the horrifyingly overwhelming majority of the victims were Jews.

Many of those who were swept up but somehow managed to survive came to Canada. We have been blessed and enriched beyond measure by the immigration of those who survived the Holocaust, including my own husband. For them, I think it is appropriate to use the date that this bill chooses. This bill, however, is not only for them. This bill is for us all, and about us all.

Hon. Joyce Fairbairn: Honourable senators, like Senator Fraser, I had not intended to speak on this matter in the hope that not doing so would accelerate the pace of its approval by the Senate. My name stands as the seconder of Senator Poulin's motion, and I am proud to do so. There are a number of reasons, many of which have been articulated today with great feeling and sensitivity in this chamber, why this bill is necessary.

First, we must remember these events of history, be they in Germany, Rwanda or any other place in the world, because only through remembering them can we hope to prevent such tragedies and atrocities in the future. While we do so, we must also remember, as a nation, that in the time that this was taking place, our part of the world was not well-schooled in what was happening abroad. Indeed, ships came to this part of the world from Europe, filled with Jewish people seeking an escape from what had become all too clear was occurring in the middle of that great war. When they sailed past the ports of Canada, we did not invite them to come to our shores.

• (1650)

Honourable senators, as all of you know, because I keep raising the subject, I have spent the last 20 years dealing with the issue of literacy. It has many forms and one is historic literacy. One of the great tragedies in this country is that our young people across this nation, are not being taught adequately about their own country, about the history of Canada, and about the creation of this nation and the Constitution. If you cannot understand the history of your own country, how can you take part in the memorable debates that we have had in recent years over our Constitution and our Charter of Rights, which offers us greater protection as individuals than any country in the world? If young Canadians cannot understand what happened in their own country, how can they ever understand the history that prompted the Holocaust with all of its issues, the insanities and the inhumanity that caused so many lives to be quenched, so many families to be tortured, and so many people to come to our country with nothing but the memories of the tragedy in their lives, never to be forgotten?

It is most important that a day be set aside — just one day out of 365 — each year to enable our young Canadians to understand and to know of some of the brutality that history dealt, to ensure

that, in this country, we will never let the ships pass by again, should we be called upon to take part. Indeed, when you think more recently of people like General Dallaire, and the significant contribution he is making, at great strain on his own self and on his own life, to spread the story of Rwanda, how could we do any less than support the motion that is before this house today?

Hon. Senators: Hear, hear!

Hon. Richard H. Kroft: Honourable senators, I am provoked to speak now because the last few speeches have taken a turn, focusing on our children and a concern for knowledge, whether it be Senator LaPierre's concern for the knowledge he did not have in his youth or Senator Fairbairn's plea for our children to have an opportunity to know. I want to take a moment to give you a hopeful little insight.

My late dear friend, Izzy Asper, was terribly preoccupied with this subject. A few years ago, he arranged to take a few students from a local Jewish school — because the concern began with educating Jewish students — for a week to Washington, to visit the Holocaust Memorial Museum there, so that they would then come home and tell their fellow students about it. The following year more students went. Then, the next year even more students of all religions, from all schools across Manitoba went. This trip. Honourable senators, this year, 1,000 students from all across the country will be going to Washington under the program that he initiated.

The educational aspects of the program now go beyond a visit to the Holocaust Memorial Museum. Students begin with a month of studying the roots of what makes a community work. Students sign a written pledge and undertaking that they understand what human rights mean. When they arrive in Washington, they visit not only the Holocaust Memorial Museum but they also visit many other sites and elements, portrayed so magnificently in the city that stands for what human rights and dignity mean. This program is growing every year across the country. Each one of those students is not only learning but is also training to become a teacher.

I have not spoken about Izzy in this chamber, but I thought this was a good way to do so.

Hon. Senators: Hear, hear!

Hon. Serge Joyal: I would remind honourable senators of the symbolism and serious way this important bill prompts our consciences. A bust of the first woman to have been appointed to the Senate, Senator Wilson, is at the entrance of this chamber. She was appointed by the late Prime Minister Mackenzie King. When Senator Wilson was appointed, there were questions about the contribution that "women might bring to the world of men."

History tells us that, during all the years that Senator Wilson was a senator, she fought to bring young Jewish children from Europe to Canada. She fought Prime Minister Mackenzie King; she fought the deputy minister of immigration of the day on a daily basis, in a continuous and steady manner, because he said to her, "One Jew is too much." Relentlessly, she pushed the government to try to bring to the attention of the political authorities of the day the plight of the Jewish people, especially the children in the concentration camps.

When you enter this chamber tomorrow, give her a nod, because if she were sitting in the Senate today, she would support this bill.

Hon. Senators: Hear, hear!

Hon. Jeremiah S. Grafstein: Honourable senators, I am deeply moved by the profound support that each and every senator has articulated for this bill today. Some are concerned about the procedure, and I can understand that. However, there is deep, rational and emotional support for this bill.

Honourable senators should know, and I think you should understand, that this bill did not emanate in this place. It emanated, as Honourable Senator Prud'homme said, quickly and surprisingly in some fashion, in the other place and was unanimously approved by all parties. It was sent over here with the expectation that the same treatment would be received here. I was as surprised, as honourable senators were, when I was asked if I would assist in bringing this bill to a quick and speedy resolution.

How does one approach the Holocaust? It has been 58 years since the end of World War II. Fifty-eight years ago the gases were turned off and the fires of the Holocaust were abruptly doused and a rational, cold and calculated plan was disrupted.

• (1700)

How does one repair the cracks when evil seeps into the world? When confronted with evil beyond imagination, good can only overcome, we are taught, by each and every soul attempting small, simple gestures; tiny acts, minor deeds, to set about to repair the damage to the world.

Back in 1995, I was watching a television show one night called *60 Minutes*. There was a debate about the Holocaust, as to whether it existed or not. I became so upset that it led me to consult an old friend, Laurie Faibishue. Senator LaPierre worked with him for many years in television. Faibishue inspired me to go and write a book, which I did, within six months. In the foreword to that book, entitled *Beyond Imagination*, I wrote these words:

We live and die by words. The Holocaust is a word in our heads that can find no rest. Our heads resonate from denial to apathy, almost as if we fear to pierce the deeper, darker recesses of our minds. Yes, it has been 58 years since the end

of World War II, when the gases were turned off and the fires of the Holocaust were finally doused and the Final Solution was disrupted. Yet the Holocaust, despite those 58 years, imagined or remembered to this day, refuses to sit still.

There are those who argue that, after the Holocaust, there can be no words, no prose, no poetry, no music, no history, to describe the event. Lord Bullock was one of the eminent historians of the Second World War, an eminent historian of Nazism. He argued in his book that the Holocaust, after his study, was singular and unique for two reasons: the proportionate numbers killed and that they were killed for no other reason than that they had a faith, the Jewish faith.

For me, honourable senators, memory of these events is both passive and active. We cannot just look backwards, as many honourable senators have mentioned today, without looking to the present and without looking to the future.

I dedicated my books, senators, to my two grandsons, Daniel Aaron and Edward Adam. They have been joined now by a third grandson, Isaac Morgan. I challenge them, as I was challenged myself, to probe for themselves the still-hidden lessons of the Holocaust, as every generation is admonished to do by the biblical sages, to act as if each living individual bore witness to each saga, past and present, in the winding and jagged course of the human condition.

Now we have before us a very modest bill, unanimously approved in the other place, to establish one day as Yom Hashoah, following the ancient Jewish calendar. This day was selected as the day that commemorated the end of the Holocaust. The day is celebrated in many countries around the world. It is celebrated and commemorated not just by members of my faith, not by just my co-religionists, but by everyone, because it is not just a moral lesson for Jews. It is a prophylactic to such vile activity in the future. It will be a day to remember the past and a day, it is hoped, to renovate the future; a day when all can remind themselves, as many senators have said before: Never again. Not now; not ever.

I urge honourable senators to support this modest measure to remind Canadians annually of the need to repair the world. For those honourable senators who feel they have not had an appropriate time to consider this and whether they wish to support this bill, I say to them that opportunity will be given now; it will be given on third reading. As other honourable senators have said, it will be given each and every year for those of you who, I hope, will unanimously support this very modest measure.

Hon. Senators: Hear, hear!

Senator Prud'homme: Would the honourable senator take a question?

I think it is a great day because, if it were not for my stubbornness, I am afraid that we would have had extraordinarily speedy passage of a very important bill to commemorate. We are talking about education that we will repeat every year. We are talking about educating the younger people, too, but there is something else; it is called educating ourselves.

Do you not think, honourable senator, that this was a good exercise that we have just completed, and we will have another no later than tomorrow, I am sure. The fact that someone says, "No, that is not the way to do it," means that we can talk on it first and then we can ensure that the bill passes. It is Monday so we know it will pass. I will make every effort and not just effort — I will make sure it passes no later than tomorrow if you leave it to me. The fact that the process has forced honourable senators to get up on their feet becomes part of the history that will be used when we commemorate this day next April 19.

In *The Hill Times* editorial of today, things are confused as if the bill is already done. That is not the way to proceed. They speak as if, for them, it is all done. It is done when it is done. It should not have been referenced that way, but differently. I will not quarrel over how it was done.

Having listened to Senator Grafstein and Senator Fairbairn and others, I am pleased that, by participating, I have seen the emotion I created last week. "What is he up to? What will he do?" I am glad I forced some people to stand up. Some others did not; they will applaud. Do you not agree that this is the best way for us to proceed in the Senate — to vindicate ourselves? We become better educators if people bring education to us.

Senator Grafstein: Honourable senators, the story of the Senate is that each senator celebrates, commemorates and acts according to his individual predilections and experience.

Honourable senators, in my family and in my tradition, we celebrate death in our family every year: the deaths of our immediate family members and of our compatriots. This is nothing new for me. This is an annual time of looking backwards and looking forward. That is called Yartsa, a 5,000 year-old tradition that we exercise. When you do that each and every year, you somehow feel that you are a part of history and you say to yourself that, as best you can, you want to make a difference in this world so that the evils that have overcome us in the past will not overtake us in the future.

Again, I want to thank honourable senators for their profound comments. I hope we can move now on this bill. It has been 58 years in the making, and it is not a moment too soon.

• (1710)

Hon. Consiglio Di Nino: Honourable senators, I, too, would like to add some words to the subject.

I heard Senator Fairbairn speak. I was reminded of a comment that I should have put in my notes and I did not; that is, too often when people around the world have been looking for sanctuary — and that is a word that in the Judeo-Christian dictionary means a lot — we have turned them away. We may learn to do otherwise in the future.

Honourable senators, I rise to add some comments on the creation of Yom HaShoah, the Holocaust Memorial Day. We all know the atrocities that were committed during World War II. Unspeakable numbers of opponents to the Nazi regime were brutally and savagely murdered. However, the Jewish community of Nazi Europe was specifically targeted for particularly inhumane treatment. Atrocities were perpetrated against defenceless men, women and children. Millions were mercilessly tortured and killed.

Regretfully, those who perpetrated these crimes against humanity were not the first to behave so savagely. History is full of examples of similar madness, some quite fresh in our memories. The proclamation of Yom HaShoah will serve to honour the memories of the victims of these acts of barbarism, but it will also be a constant reminder to us and future generations of what mankind is capable of unleashing against his brothers and sisters.

It must also be a reminder that we cannot console ourselves by pointing fingers at the perpetrators, for all of us by omission or commission are responsible for these acts of madness.

Perhaps Senator LaPierre, Senator Fairbairn and I did not know, as we were too young, but the world knew what was happening in Nazi Germany. The world knew what was happening in the former Yugoslavia, in Rwanda and, yes, in Tibet, and in many other corners of the world, and yet we allowed these acts of genocide and other holocausts to occur right before our eyes. Even as we watched these atrocities being committed on television, we went on about our business of having a good life.

Honourable senators, I was a child in Italy during World War II and have many dark memories of those years. I visited Yad Vashem, one of the most moving experiences of my life. Throughout the years I have met a number of Holocaust survivors, who amazed me with how little hatred they had toward those who committed the crimes. They had lots of pain, but generally not hatred. I do not know if I could be so generous.

That is why this remembrance is so important. Hatred is a main cause of madness and atrocity. Hatred at some past wrong, real or imagined, is what leads to murder, to genocide, to holocaust. Although I am not confident in our ability to succeed, we must continue to be ever vigilant. We must continually remind ourselves of the evil that exists in all of us. By remembering, maybe we can achieve some success in stopping some future madness.

Let Yom HaShoah — Holocaust Memorial Day — be that constant reminder to all of us that madness does not choose to infect any particular race, colour or creed, and when it strikes it creates unbearable havoc and pain, particularly for the innocent.

The Hon. the Speaker: Are honourable senators ready for the question?

Hon. Senators: Question!

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and bill read second time.

CONSIDERATION IN COMMITTEE OF THE WHOLE

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

Hon. Marie-P. Poulin: Honourable senators, I move that the bill be referred to Committee of the Whole now.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Do you have a point of order, Senator Corbin?

Hon. Eymard G. Corbin: Honourable senators, is this motion debatable?

The Hon. the Speaker: No, I do not think it is, but I will check.

Under rule 59(16), a motion to resolve the Senate into Committee of the Whole can be made without notice. I could look further, but I think such motions are not debatable.

Hon. Anne C. Cools: Honourable senators, is a motion not required to resolve that the Senate go into Committee of the Whole?

The Hon. the Speaker: Yes, a motion is required.

Senator Cools: The order of the motions may be a little bit strange, but it seems to me that to resolve into Committee of the Whole requires a resolution, a motion of the Senate itself.

The Hon. the Speaker: It does, Senator Cools, and I will draw your attention to our rules. This does not have to do with a motion.

It goes without saying that a motion is required to refer a bill to committee or to take the next step. The important issue that we may have before us as a result of Senator Corbin's question is whether it is a debatable motion. I have attempted to answer by drawing our attention to the rule that reads that it is not a motion that requires notice. In other words, it can be moved now and is properly so moved by Senator Poulin.

The question is: Is the motion debatable? In addition to what I have said, I would refer honourable senators to rule 62, which is where we go through a sort of backwards process to determine whether a motion is debatable. Rule 62(1) reads:

Except as provided elsewhere in these rules, the following motions are debatable...

One of them, (i), has been noted here. There are many of them.

I am told it is not here. I can go through them all, if honourable senators wish, go from (a) in the alphabet to (r).

If Senator Corbin wishes, I will read them so that we can confirm, but my best advice is that this motion is not debatable because it is not referred to as a debatable motion in rule 62.

Senator Corbin: I accept that as a ruling. However, may I rise on a point of order?

Honourable senators will recall that when I spoke on second reading I brought to the attention of the house the fact that the Senate was not included. I suppose that an amendment will be made to that effect in Committee of the Whole.

The other concern I raised was the fact that the Standing Senate Committee on Legal and Constitutional Affairs has considered a number of bills in the recent past dealing with commemorative proposals. The effort there was to query the government if there was a protocol for the establishment of important commemorative events and dates in this country. The answer is far from clear. I have expressed over the years a strong feeling for the development of a protocol.

I make it very clear that I support this initiative. This bill is not in question. What is in question is the process, generally speaking, as it affects commemorative days. I pointedly raised my concern that we will not know specifically from year to year on what specific date the commemoration of the Holocaust will fall. It follows the Jewish calendar, which is based, more or less, on the lunar calendar.

• (1720)

There is some relevance in wanting to know on what dates in the future this commemoration will occur. I want to know if it will come into conflict with some other important commemorative dates.

Before we engaged in this debate, I asked Senator Grafstein if he knew, for example, on what date that commemoration will fall in this year. He was not in a position to give me an answer. It is important to know in what way it could affect other commemorative dates.

I am actually making a speech and posing a question. I realize that. I hope honourable senators and His Honour recognize that, too. However, when we get into Committee of the Whole, will there be someone to answer the question I have just posed?

The Hon. the Speaker: If it is a question, Senator Corbin, I cannot help you.

As to whether it is not in order for us to proceed, I hazard a ruling, which would be that while the Standing Senate Committee on Legal and Constitutional Affairs possibly has a reference on the question, as a general one, concerning designating dates for special days, the fact that it has not reported or finally resolved its work is not a problem in terms of proceeding with the motion before us. Therefore, I will put the question, honourable senators.

It was moved by the Honourable Senator Poulin, seconded by the Honourable Senator Grafstein, that the bill be referred to a Committee of the Whole Senate presently.

Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

The Hon. the Speaker: I will leave the Chair and ask Senator Pépin to take the Chair of the Committee of the Whole.

Senator Cools: The Senate has not resolved to go into Committee of the Whole Senate. It has only just resolved to send that bill to the Committee of the Whole. A resolution or motion is needed for the Senate to go into Committee of the Whole.

The Hon. the Speaker: Honourable senators, based on the motion that has just been passed, is it agreed that we proceed to Committee of the Whole?

Hon. Senators: Agreed.

The Hon. the Speaker: I now leave the Chair and Senator Pépin will take the Chair of the Committee of the Whole.

The Senate was accordingly adjourned during pleasure and put into a Committee of the Whole on the bill, the Honourable Lucie Pépin in the Chair.

The Chairman: Honourable senators, the Senate is now in Committee of the Whole on Bill C-459, to establish Holocaust Memorial Day.

Honourable senators, rule 83 states:

When the Senate is put into Committee of the Whole every Senator shall sit in the place assigned to that Senator. A Senator who desires to speak shall rise and address the Chair.

It is agreed that rule 83 be waived?

Senator Cools: Why waive rule 83?

The Chairman: It is the tradition in this place.

Is it agreed that rule 83 be waived, honourable senators?

Hon. Senators: Agreed.

The Chairman: Pursuant to citation 690 of Beauchesne's, the preamble and the title of the bill are postponed.

Honourable senators, we are on clause 1 of the bill.

Senator Cools: Honourable senators, I have a problem. We are in Committee of the Whole and have proceeded directly to clause-by-clause consideration of the bill. Committee of the Whole should accord us some opportunity to dialogue and to put questions to the sponsor of the bill. Clause-by-clause consideration should be the last part of our deliberations, which should not take too long because the bill is a one-clause bill. Perhaps we should allow time for debate.

Madam Chair, I think that the Committee of the Whole has to take a decision to proceed to clause-by-clause consideration of the bill.

The Chairman: It seems that this is the way we proceed when discussing the first clause of a bill.

Senator Cools: Not necessarily, Madam Chair. We have had many Committees of the Whole. We have heard ministers and other witnesses in Committee of the Whole. There is a wide range of ways in which we can proceed. Obviously, some senators may not be that experienced with it. I was expecting that, perhaps, Senators Grafstein or Poulin could put a few more questions before us for debate.

The Chairman: Is it agreed, honourable senators, that we have a general discussion?

[Translation]

Senator Prud'homme: We have here the perfect example of what happens when there is haste and precipitation. Everything could have proceeded properly. To whom are we to ask questions? In Committee of the Whole we have someone of whom to ask questions. We cannot ask questions of Senator Grafstein, because he is not the sponsor of this bill. We cannot call witnesses. Frankly, what is going on? Senator Grafstein was very clear; these events took place 58 years ago, and now, instead of taking a day or two, we are in Committee of the Whole. We even had to sit last Friday, a mistake in my opinion. Why? I know that some people are prepared, but, as it happens, so am I. The Rules state that senators may speak from their own places or from any other seat, and that as often as they wish. I love the Committee of the Whole in the House of Commons; I think it is interesting. But here in the Senate, there have been few or none in the last ten years.

I would have liked Mr. Marceau, the Member of the House of Commons who sponsored this bill, to be called as a witness. First of all, that would give some scope to what we want to do. This bill was introduced by the NDP three years ago, and they came to a friendly agreement to give it to the Bloc Québécois. Who is the sponsor of the bill? Whom can we question? I do not see anyone in this chamber who could take that position. Why not follow our usual rules calmly? If we have questions, to whom shall we direct them? To Senator Carstairs? She will say no; it is not a government bill, it is a House of Commons private member's bill. To Senator Grafstein? No; his name has been mentioned, but he is not responsible for this bill. Perhaps Senator Kinsella? Not him; his name gets mentioned everywhere, but it is not on this one. That leaves Senators Fairbairn and Poulin, who should take a seat and answer because they are the sponsors of this bill on behalf of the sponsors in the House of Commons.

[English]

That would be the orderly way to proceed in Committee of the Whole.

[Translation]

Otherwise, it will be too discouraging for new senators. They will end up saying, if that is what a committee of the whole is, we are better off without it.

• (1730)

[English]

Senator LaPierre: First, I want to know why we are not passing this bill immediately by unanimous consent? It is such a harmless bill. Second, as far as the date is concerned, Israel has declared a special day of the year to be the Day of the Holocaust, or something to that effect. We could easily adopt that day to be the same in our country. Have we done that? We have the date; it is in the bill. All we need now is to move that we adopt this bill unanimously. I so move.

Senator Mahovlich: Is that the Jewish calendar?

Senator LaPierre: The Jewish people have a calendar. This is why they are in the year 5,000 and something in September.

They have a calendar and we can use that calendar. This is, after all, something that belongs to them — and to us as well. We can use their calendar. What is wrong with that?

Senator Mahovlich: It might conflict with our calendar. That is what we are saying. If we had the date on our calendar, there would not be a conflict.

Senator LaPierre: You want a permanent date.

Senator Mahovlich: The Catholics have All Souls Day. We celebrate the dead on November 2 every year; it is simple.

Senator LaPierre: We celebrate all the saints who are all in the Senate.

Senator Kinsella: The reason I am sitting is that we have waived the rule. It has been our tradition that in Committee of the Whole we can speak from our places.

We have all of the information and we have all of the resources available in Committee of the Whole, as we are currently constituted, to deal with all the matters that honourable senators wish to raise.

When we have the opportunity go back to the preamble — the sixth preambular paragraph — we will be looking to move an amendment. We think it should say “whereas the Parliament of Canada” and not simply “the House of Commons,” which was alluded second reading debate by the Honourable Senator Nolin.

Having in the chamber the proponent and seconder of the bill, we have the opportunity to get guidance and explication from those honourable senators — as indeed we have the opportunity to get it from all honourable senators.

I think this is a straightforward process. We are in committee. We have, I assume, ascertained that we do not have to call in outside witnesses. Having said that, we will be looking to the opportunity to move an amendment to the sixth preambular paragraph.

[Translation]

Senator Nolin: Honourable senators, I have a procedural question and Senator Kinsella just referred to it. Are we currently discussing clause 1 of the bill? At what point will I be able to present my amendment? That is all I want to know.

The Chairman: We will have a general discussion and then you can present your amendment.

[English]

Senator Andreychuk: Honourable senators, I have a question for Senator Poulin. I had heard that perhaps there would be an amendment to indicate that the House of Commons and the Senate are committed to using legislation. I will not deal with that one. However, what is the intention of the second paragraph of the preamble? It states:

WHEREAS six million Jewish men, women and children perished under this policy of hatred and genocide;

The following paragraph states:

WHEREAS millions of others were victims of that policy because of their physical or mental disabilities, race, religion or sexual orientation;

The first paragraph I quoted talks about perishing, which means dying; it is related to 6 million Jewish men, women and children. Where in this preambular statement do we take note of the many Jewish men, women and children who were victims of those policies but did not perish? They can be categorized as victims because they live the Holocaust in a way that you and I do not.

Secondly, regarding the second paragraph I quoted, we know, for example, with the Soviet Union files finally being opened, that these categories are growing. Was it the intention to limit the paragraph only to those other categories of victims? The paragraph excludes some victims — more particularly, Jewish men, women and children as victims.

In proposing this legislation, what is the thinking behind those two paragraphs?

[Translation]

Senator Poulin: Honourable senators, I thank my colleague for her question. I recognize the interest she has in this very important legislation. Our colleagues at the other place, who drafted the preamble, had no intention of excluding any group whatsoever. The honourable senator just mentioned that our history is alive. Researchers around the world continue to discover facts and dates. These facts and dates continue to increase our knowledge of this significant tragedy, the Holocaust.

[English]

Senator Andreychuk: Given my honourable friend's explanation that millions of others were victims of that policy, why does the second preambular paragraph not say, "WHEREAS six million Jewish men, women or children perished or were victims under this policy of hatred and genocide"; and why does the third paragraph not say, "WHEREAS others perished or were victims"?

[Translation]

Senator Poulin: Honourable senators, as I was saying earlier, our colleagues at the other place prepared the preamble. Here, as a Senate committee, we have the opportunity to make the adjustments that the honourable senators would like to make today. If the honourable senator wants to move an amendment to make the bill clearer, I invite you to do so. Do not hesitate.

[English]

Senator Bryden: I had my hand up a little earlier. I know this is not debatable, but I am at a loss as to why we are doing this. Why do we not simply follow normal procedure and refer this bill to the Standing Senate Committee on Legal and Constitutional Affairs, where some of these questions can be dealt with expeditiously? We dealt quickly with a bill amending the Criminal Code of Canada. I know that I am out of order, but I would have raised my point before. That is why I had my hand up.

Senator Kroft: I can appreciate Senator Andreychuk rephrasing the question. Unless I misheard, I think there is a simple answer to her question, and I would like to put it to rest if we could.

• (1740)

Senator Andreychuk: I have what is, perhaps a series of questions. First, whereas 6 million Jewish men, women and children perished under this policy of hatred and genocide, the bill does not refer to Jewish men, women and children who were victims of this policy of hatred and genocide. It simply refers to those who perished. The drafter of this bill and the proponent, the Honourable Senator Poulin, should tell me that the word "perished" can include those who died as well as those who suffered physical torture, the emotional and mental consequences of being through it, and the fear and hatred. Those horrors are difficult to deal with, generation after generation. It seems to me that it is not all-inclusive.

Second, we know that others died — people who helped the Jewish people. In fact, recently, Israel gave awards, which it has done for a number of years, to people who supported the Jewish people in the Holocaust. In particular, it was noted that some lost lives by offering their assistance.

If this were intended to be an omnibus preamble, I would hope that it would cover the Jewish people who perished and those who were victims. I would hope that we would put in the preamble that others either perished or were victims. If the words in this can be interpreted to cover that, I would be delighted to have that interpretation put forward on the record.

Senator Kroft: There is no intention to broaden the wording to include the whole realm of human implication and human suffering. The point of the Holocaust and the point of the Holocaust bill are to recognize those who died. The accepted historical number of those who died is 6 million. The point of the reference to the Holocaust and to this bill is to refer to those who died.

You could, in broadening your study of the subject, discuss the ramifications upon all of those who suffered in other ways, but the point of Bill C-459 is to recognize those who died and that is why the bill is so specific. Rather than attempt to broaden the meaning of the word "perished" I would urge that it is simply a recognition of those who died.

Senator Andreychuk: Why then would the next paragraph have been included if the single intent of this bill were to recognize the 6 million Jewish people who died and not the other Jewish people who were victims? Why would we include the third paragraph?

Senator Kroft: I have made my point as clearly as I am able on the point of the bill. I do not think anyone would like to leave the message that that was the only horror of the Holocaust. Some broader language would be appropriate and "anti-exclusive," if you like, but to confuse the issue over what is meant by perished or by the number 6 million, at this stage of our history, would be an odd thing to do.

[Translation]

Senator Beaudoin: I am surprised by this line of discussion. I agree with Senator Bryden. I think this bill should have been referred to the Standing Committee on Legal and Constitutional Affairs, because very serious legal problems are raised in it. I support the bill 100 per cent, but if we remain in Committee of the Whole, someone is going to have to answer our questions. Senator Andreychuk is asking very good questions. If there are two "whereases", there is a reason for that. If we want to keep only one, namely the one about six millions persons who perished, that is another matter.

[English]

With respect to two paragraphs, I am not sure that we have taken the right direction. Obviously, we have some legal questions on the bill. If we stay in Committee of the Whole, we should restrict ourselves to what Senator Kroft has said.

If this committee decides to amend the bill, it would be fine with me, but I would suggest that we must proceed in the proper way. When we deal with a bill quickly, there is always the risk that we will make an error in the structure of the bill and affect the legality of the bill, if it is passed.

If senators wish to continue in Committee of the Whole — the plenary committee — someone should respond to our questions. We have no choice. If senators wish to refer the bill to the Legal Committee, then that is another matter. This is important in my opinion.

Senator St. Germain: I have a supplementary comment. Senator Bryden made a suggestion and Senator Grafstein and others are trying to respond. Would it be out of order to recommend that

this go to committee immediately to be dealt with expeditiously and sent back to the house tomorrow afternoon? This is an important bill. We should not jeopardize it by going through one process when another process would possibly be more expeditious and more efficient, and would meet the requirements and the will of the chamber, which, I believe, is 100 per cent in favour of dealing with this bill.

Honourable senators, we may be encumbering the process by doing this in Committee of the Whole.

Senator Di Nino: I should like to deal with the valuable point raised by Senator Andreychuk.

The havoc that resulted from this terrible part of our history, as horrible as it was in the loss of lives, included millions of others who were affected psychologically and economically. Untold millions suffered in some way. I was struck by Senator Andreychuk's question and I understand that we can pick this bill apart.

However, the third "whereas" speaks to "the terrible destruction and pain of the Holocaust may never be forgotten." I think that we can probably interpret the other horrible pain and suffering that the Holocaust wreaked upon all of humanity, but particularly on the Jewish community. I would be satisfied if that issue were recognized by the third "whereas."

[Translation]

Senator LaPierre: I am absolutely outraged.

[English]

I am outraged that this important issue is being debunked by nitpicking about procedure and about the meaning of words.

When one is dragged out of the house in the middle of the night with children, separated, thrown into a train full of feces and carried away, one perishes. That is the beginning of the pain. Are we to debate this bill word for word for the next 10 years? Come, honourable senators, get a life and accept this bill so that we do not insult Canadians by delaying its passage by discussing the obvious. People died; people died; and people are forgetting that they died.

• (1750)

Senator Cools: Honourable senators, Committee of the Whole is a bit unwieldy as a proceeding in which to make amendments. To answer Senator Andreychuk's question about those who perished versus those who did not perish, the intent of the bill and the preamble is summarized in the title of the bill — "Holocaust Memorial Day."

Honourable senators, memorials are usually for those who have died. The intent of the bill was to remember the six million people who perished. They use the word "perish." Perish is a very sanitized word for dying.

I would propose, honourable senators, that perhaps, instead of amending the different paragraphs of the preamble one at a time, we delete them because it is easier than to amend them. We could keep the first paragraph of the preamble. We could keep the second paragraph. We could delete the third paragraph. We keep the fourth and the fifth and delete the sixth and seventh. In that way, we cross off the procedural problems and move towards getting a result.

It is much easier to get a vote on a deletion than on each different, individual amendment of a word here and there. It is crystal clear that the intention of the bill is to create a day to remember those who perished in the Holocaust. Deleting those two paragraphs of the preamble would fulfill the entire intention of the bill. In that way, we could move ahead very quickly to actually approving the clauses.

Honourable senators, the question of time is a concern for the sponsors of the bill because if the Senate made any changes, a message would have to be sent to the House of Commons. Therefore, time is of the essence.

I propose this as a solution because I am convinced that if we delete those two paragraphs of the preamble, we would not have to worry about whether we have to add the word "Senate," or take out the phrase "House of Commons" or use the word "Parliament." Those two paragraphs could be easily deleted and the substance, spirit and intention of the bill would be perfectly honoured.

As I said before, honourable senators, memorials are about those who have died. This is idea that would help us avoid what could turn out to be a huge procedural burden.

Senator Grafstein: Honourable senators, I listened carefully to every comment by every senator. I start with the process. I do not think this process is cumbersome at all. It respects Senator Prud'homme's comment that this is an important and profound issue, and therefore, rather than leave it to an individual committee, it achieves a reflection of the views of all senators on the purport of this bill. We reserve the Committee of the Whole for bills of paramount and profound importance, which Senator Prud'homme rightly said this is. Let us focus on the issue at hand, which is the words in front of us. We have agreed unanimously that the purpose of the bill is profound and serious. Hence, we are sitting as a Committee of the Whole.

Having listened to every comment, Senator Di Nino and Senator Kroft have summed it up. You have to read each and every recital to understand the meaning or intent of the bill. The recitals are not binding. They are indicative. Senator

Beaudoin and Senator Andreychuk both know that recitals legally only give direction. They are not binding. The binding portion of the bill is the reference to the day.

This is immaculate drafting. There is only one correction, which Senator Kinsella brought to our attention, that should be made. It is in recital 6, which reads, "Whereas the House of Commons..." As Senator Kinsella suggests, one word should be substituted. The recital should read, "Whereas Parliament is committed..." which includes both Houses. That would solve the drafting portion of the bill.

I urge all senators to read slowly and carefully each and every element. It is exclusive and inclusive of everything that everyone has said. It is summed up beautifully and immaculately near the end of the last recital where it says that this "is an opportune day to reflect on and educate about the enduring lessons of the Holocaust and to reaffirm a commitment to uphold human rights."

It is inclusive. It is exclusive. It is all-encompassing. As well, it covers the history and progress of this particular event. It allows each and every person to reflect on the day and to explain, if they choose, the meaning of the day — now, in the past and in the future.

The other House has prepared an immaculate bill. It covers each and every concern. Senator Di Nino put it very well: It is all in the recitals. It is then up to each individual senator and Member of Parliament to reflect on that day and to help us understand the lessons of the Holocaust.

Madam Chair, I would say that this is immaculate drafting. It is not legalese. It deals with intent. The recitals are not legally binding, but the actual bill is. It covers each and every emotion and concern articulated by each and every senator.

Honourable senators, I support Senator Kinsella's initiative to amend the recital. It would reflect that both Houses of Parliament are committed to using legislation, education, and example to protect Canadians from violence, racism and hatred and to stop those who would foster and commit crimes of violence, racism and hatred. It is a most appropriate way to deal with that.

Senator Beaudoin: Honourable senators, having heard Senator Grafstein, if it is the intention of this Committee of the Whole to do what he says, I would agree. There is, of course, another possibility. We could refer the bill to the Standing Senate Committee on Legal and Constitutional Affairs. We would make a report, refer it to the Legal Committee, but this will take time.

If we want to remain and complete this bill immediately, we could. We should do it in the same way as it would be done in the Standing Senate Committee on Legal and Constitutional Affairs. We must be precise. We must be sure that we are doing something that is perfect. It is possible to be perfect: It takes time, that is all. If we want to stay here, let us stay here.

However, we must look very carefully at the intention of the bill. It may take a certain amount of time to do that, but we must do it. I agree with Senator Grafstein that the beginning of the bill is not the legality, but that bill is very important. It will be quoted. It will be in the history books. We must be quite sure.

I would agree with the proposal of Senator Grafstein that we amend the recitals properly.

• (1800)

Fine, stay in Committee of the Whole, but do it the proper way, and the proper way is legally. There is no other choice.

The Chairman: Honourable senators, it is six o'clock.

[Translation]

Senator Robichaud: Honourable senators, I believe that, if you seek it, you will probably find consent not to see the clock, so that we can continue this important debate.

We must also recognize, honourable senators, that the Standing Committee on Official Languages was supposed to meet during the adjournment. I think therefore that, by consent, the official languages committee could be allowed to meet, so that we can hear the Honourable Senator Kinsella. I am at your entire disposal. I know that we have rules but, with consent, leave could be granted.

[English]

Senator Corbin: Honourable senators, I wish to speak on a point of order. We cannot, by unanimous consent, continue sitting in Committee of the Whole. You must report and seek permission to continue.

The Chairman: It is six o'clock. Do you want me to rise and ask that we do not see the clock?

Senator Kinsella: Yes.

Senator Cools: You must come out of the Committee of the Whole.

The Chairman: It is agreed that I rise and ask that we do not see the clock?

Hon. Senators: Agreed.

Senator Cools: Her Honour cannot be chair of the Committee of the Whole and Speaker at the same time.

The Hon. the Speaker: Honourable senators, the sitting of the Senate is resumed.

REPORT OF COMMITTEE OF THE WHOLE

Hon. Lucie Pépin: Your Honour, the Committee of the Whole asks that we not see the clock. We ask for leave to sit again.

The Hon. the Speaker: Thank you for your report, Madame Chairman.

Is it agreed, honourable senators, that we not see the clock for purposes of the Committee of the Whole continuing to sit?

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I think that leave might be granted not to see the clock and also that leave might be granted so that the Standing Committee on Official Languages may meet at the same time as the Senate continues its work in Committee of the Whole.

Hon. Marcel Prud'homme: Honourable senators, my question stands. I want to know what the honourable senator intends for the remainder of the evening. Some of us have been here since the sitting began. I have no objections. However, the human body has its limits. Must we proceed through the entire Order Paper until midnight as it happened last week? I want to know what your intentions are.

Senator Robichaud: Honourable senators, earlier today, I thought we would be able to complete our work before 6 p.m. However, things have turned out differently. We are in the midst of an extremely important debate.

We have concluded government business. We must determine how long this debate should continue in Committee of the Whole before the issue is sent back to the Senate. I do not intend to keep the honourable senators here until midnight. Like everyone else, I would like to get some rest too.

Without making any promises, we will see how things progress and, if necessary, leave will be sought.

[English]

Hon. Anne C. Cools: Honourable senators, I was just about to say, in response to the Deputy Leader, that I am sure honourable senators will be agreeable to allowing the particular committee to sit, and perhaps he should make a motion to that effect.

Hon. Gerry St. Germain: Honourable senators, I have a question for Senator Robichaud. Yes, we should continue with the Committee of the Whole, but I would like to know his intentions. There are other issues that need to be dealt with. Is he prepared to stand them now, if we cannot be here, and deal with them tomorrow?

[Translation]

Senator Robichaud: Honourable senators, it was my intention to go at least to the following point. This item has given rise to a great deal of discussion already. Many of us would like consideration of this bill to move forward. Consequently, if there is agreement to stand this entire matter, I will so move and seek the consent of the Senate.

[English]

The Hon. the Speaker: I remind honourable senators that a question of privilege is on the list of things that should be heard, and I think must be heard today. I suppose there might be some agreement to defer it, but as far as I understand, that would be something that we should or must do today.

However, the first thing I need to do, honourable senators, is confirm that you wish that we not see the clock?

Hon. Senators: Agreed.

The Hon. the Speaker: It is agreed we will not see the clock. Is your disposition now to return to the Committee of the Whole?

Hon. Senators: Agreed.

The Hon. the Speaker: Before you do, I think Senator Robichaud wants to move a motion.

[Translation]

OFFICIAL LANGUAGES

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, with leave of the Senate, and notwithstanding rule 58(1), I move:

That the Standing Senate Committee on Official Languages have power to sit while the Senate is sitting today, and that rule 95(4) be suspended in relation thereto.

The Hon. the Speaker: Honourable senators, is leave granted?

Hon. Senators: Agreed.

Motion agreed to.

[English]

BUSINESS OF THE SENATE

Hon. Gerry St. Germain: Honourable senators, I would like a commitment from Senator Robichaud. I would like to speak on Bill C-250, but I have an appointment at 7:15 to which I must attend. We are not seeing the clock, and we are granting permission to return to Committee of the Whole. Will the deputy leader allow this bill to stand until tomorrow?

• (1810)

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, Bill C-250 is not a government bill. I am trying to push on with business of the Senate. This evening, it will be up to the people who sponsored this bill to decide whether or not to dispose of it.

If they want to stand this order until tomorrow, I have no objection. However, we have been trying to move forward with this bill, and all the government's business, for some time. We will see if we can address this bill before the senator leaves the chamber for his meeting. I hope we can.

[English]

Hon. Francis William Mahovlich: Honourable senators, is it possible for a Committee of the Whole to sit while another committee is sitting?

The Hon. the Speaker: We have agreed to allow the Official Languages Committee to sit while the Committee of the Whole is convened.

Is it the pleasure of honourable senators to resume the Committee of the Whole?

Hon. Senators: Agreed.

The Hon. the Speaker: I will leave the Chair.

HOLOCAUST MEMORIAL DAY BILL

CONSIDERATION IN COMMITTEE OF THE WHOLE

Pursuant to Order of earlier this day, the Senate was accordingly adjourned during pleasure and put into a Committee of the Whole on Bill C-459, to establish Holocaust Memorial Day, the Honourable Lucie Pépin in the Chair.

Senator Corbin: I think it is important for honourable senators to express their views and concerns. I do not subscribe to the loud calls that we heard earlier to adopt this motion without further debate.

I have two questions. I do not know if anyone here can answer them. If no one can, then I wish that an answer will be provided to us on third reading. I will not belabour it beyond that point.

I have been trying to find this information out from the very beginning. I am not familiar with the Jewish calendar. During what period will this observation take place from year to year? In other words, on what date, according to our Canadian calendar? You have heard me before and I will not repeat the comments I have already made, but I think it is important not only for individual Canadians but also for the collectivity to be able to know in advance on what date, in 2004 for example, the commemoration will take place. I know for a fact that people who are in the business of printing calendars would like to know so that they can include it on their calendars.

We talked about school children. It is important that they engage in the commemoration. People will have to know what date this will take place ahead of time. Can anyone here tell me during what period this commemoration will take place? It will be a shifting date, according to the Jewish calendar.

Senator Lynch-Staunton: Of all people, I can answer that question.

The lunar calendar for the Christian and the Jewish religions is available 200 years ahead of time because the phases of the moon are known. You can pull this information off the Internet or ask at any Synagogue or Catholic Church.

The Day of Remembrance for next year will be April 18. For the following few years it will be held on: May 6, April 25, April 15, May 2, April 21, April 11, May 1. The dates are known, as others more familiar with the calendar can confirm, centuries ahead of time.

Senator Corbin: That is fine if you have the lunar calendar, but I have not picked up the habit of acquiring one of those. However, my Jewish friends do have it. They live by their calendar and I respect them for that.

Senator Mahovlich: An Orthodox Christian church also has a calendar. Those people celebrate Christmas on a different date. However, Canadians do not celebrate that as Christmas. Canadians celebrate Christmas on December 25.

An Hon. Senator: Not all Canadians.

Senator Mahovlich: No, not all Canadians. Ukrainian or Orthodox Christian Canadians celebrate Christmas on another date, but most schools celebrate Christmas on December 25 and that date is designated as such on most Canadian calendars. Most Ukrainians celebrate Christmas on a date other than December 25.

Senator Stratton: The celebration of Easter changes with the lunar calendar.

Senator Corbin: I am not finished. I wish to continue.

Senator Fraser: I would simply observe that we are accustomed to having floating holidays in this country. Not only does Easter move, which is a Christian religious festival, but Thanksgiving also moves. You do not know when those celebrations will take place unless you consult the calendar. We are all accustomed to consulting the calendar, if necessary, several years in advance. It is not unusual or, in some way, "unCanadian" to have the date of a given holiday move.

Senator Corbin: Had I been allowed to speak for the duration of my time, I would have said as much. I was coming to that very point.

What is important here is that we all agree that this will be an important commemoration and that we must prepare for it. Our Jewish friends have been observing this for some time, and we must instil the importance of the Holocaust in Canadian minds and we must prepare for it. That is all I am saying. It should be commemorated with dignity.

The Chairman: If no other senator wishes to speak —

Senator Beaudoin: I think we should come back to the main question. An amendment was proposed by Senator Kinsella. Once we have dealt with that, there remains the questions concerning the second and third paragraphs in the preamble as raised by Senator Andreychuk. We recognize that these will not constitute part of the act itself, but they are important.

[Translation]

The Chairman: Honourable senators, we will move on to adopting clause 1, then clause 2, and then come back to the preamble and the motion in amendment.

[English]

Is it agreed?

Hon. Senators: Agreed.

The Chairman: Shall clause 1 carry?

Hon. Senators: Agreed.

The Chairman: Carried.

Shall clause 2 carry?

Hon. Senators: Agreed.

The Chairman: Carried.

Shall the preamble carry?

[Translation]

Senator Nolin: Honourable senators, I move, seconded by the Honourable Senator Lynch-Staunton:

That Bill C-459 be amended at page 1, 18, by replacing the words "House of Commons" by the words "Parliament of Canada."

This applies to both official languages.

• (1820)

[English]

I want to use the word "Parliament" because, of course, there are two chambers, but there is a third component; that is the Queen. She must also be part of that effort.

Senator Milne: May I suggest you use the words "Parliament of Canada" in English, rather than "Canadian Parliament."

Senator Nolin: I never said "Canadian Parliament." I said, "le parlement du Canada." In English, it is the "Parliament of Canada."

[Translation]

The Chairman: It is moved: That the bill be amended at page 1, 18, by replacing the words "House of Commons" by the words "Parliament of Canada."

Is it your pleasure, honourable senators, to adopt the motion?

[English]

Senator Prud'homme: Honourable Senator Nolin rightly said line 21. Usually the line numbers correspond, but this time they do not. If we amend line 21 of the English version, it will look quite —

Senator Lynch-Staunton: No, no.

The Chairman: Honourable senators, Senator Nolin has moved that Bill C-459 be amended at page 1, line 18, by replacing the words "House of Commons" by the words "Parliament of Canada."

Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

The Chairman: Carried.

Shall the preamble, as amended, carry?

Hon. Senators: Agreed.

The Chairman: Carried.

Shall the title of the bill carry?

Hon. Senators: Agreed.

The Chairman: Carried.

Shall I report the bill, as amended?

Hon. Senators: Agreed.

The Hon. the Speaker: Honourable senators, the sitting of the Senate is resumed.

REPORT OF THE COMMITTEE OF THE WHOLE

Hon. Lucie Pépin: Honourable senators, the Committee of the Whole, to which was referred Bill C-459, to establish Holocaust Memorial Day, has examined the said bill and has directed me to report the same to the Senate with amendments.

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

Hon. Marie-P. Poulin: With leave, I move that the report be adopted now.

The Hon. the Speaker: Honourable senators, is leave granted?

Hon. Senators: Agreed.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

The Hon. the Speaker: Point of order, Senator Prud'homme?

Hon. Marcel Prud'homme: Honourable senators, it is not a point of order. Honourable Senator Poulin wishes to adopt the report. I think but the bill should be read the third time at the next sitting of the Senate so that we can entertain more speeches.

The Hon. the Speaker: Is leave granted, honourable senators, that we place this bill on the Orders of the Day for third reading at the next sitting?

Hon. Pierre Claude Nolin: The report is adopted.

The Hon. the Speaker: The report is adopted. In answer to the question, "When shall this report be taken into consideration," shall it be taken into consideration at the next sitting?

Some Hon. Senators: Now.

The Hon. the Speaker: Honourable senators, to clarify, I believe honourable senators have agreed that the report of the Committee of the Whole is adopted.

Hon. Senators: Agreed.

The Hon. the Speaker: I put and received the answer to that question. The next question I put was to Senator Poulin: "When shall this bill be read the third time?" It is requested that leave be granted to consider the bill now.

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

The Hon. the Speaker: Leave is not granted.

Honourable senators, when shall this bill be read the third time?

On motion of Senator Poulin, bill placed on the Orders of the Day for consideration at the next sitting of the Senate.

CRIMINAL CODE

BILL TO AMEND—SECOND READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Mahovlich, for the second reading of Bill C-250, to amend the Criminal Code (hate propaganda).—(*Honourable Senator St. Germain, P.C.*).

Hon. Gerry St. Germain: Honourable senators, I rise today to speak to Bill C-250. Last May, I made a statement addressing Bill C-250 where I suggested that the hate crimes section of the Criminal Code and identifiable groups be amended to include "national origin." Since then, my office has done considerable research into the matter and has found that national origin was indeed considered and recommended back when this section of the code was being framed.

Honourable senators, we know that creating a hate crimes section of offences was the subject of consideration in the Cohen recommendations of 1965, that a number of private bills were introduced, and that after five years of debate sections 318 to 320 were written into the Criminal Code.

While the Cohen committee considered including "sex" and "national origin" in the identifiable groups, it ultimately did not because the committee was mostly concerned with addressing anti-Semitism and racist propaganda.

Following the Criminal Code amendment came the 1977 human rights legislation which included "sex" in the identifiable groups:

...racial, national, ethnic or religious groups or a group defined by reason of age, sex, family or marital status, disability or pardoned conviction.

Also section 15(1) of the 1982 Charter included "sex."

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age, or mental or physical disability.

Honourable senators, assuming there was a comprehensive debate that led to the category of "sex" being clearly identified as a group in these laws, then it seems reasonable to make consistent the older legislative instrument by including "sex" or even "sexual orientation" in the Criminal Code's identifiable groups.

Honourable senators, our parliamentary history and the wishes of the Canadian public are clear. All agree that hateful acts perpetrated upon others —

Senator Cools: Not so fast.

Senator St. Germain: — and therefore hate crime is not to be tolerated in Canada.

I never realized I had such a devoted following, so I will slow down.

While Canadians do not condone hateful acts against others, be they Canadian citizens or citizens of other countries, there has been a loud response from the Canadian people to not pass Bill C-250 as written. Canadians from every region are concerned that Bill C-250 will have negative consequences on their right to freedom of expression and freedom of religion. According to Statistics Canada, 83 per cent of Canadians profess religious beliefs, and most churches have expressed opposition to this bill.

• (1830)

Canadians have said there are some basic problems with the bill. The necessity for this specific legislation has not been shown. Statistics are scarce and the examples noted by the bill's sponsors are already illegal under existing law. Current libel and assault laws extend full protection to all individuals.

The terms of the legislation are imprecise and unclear, such as "sexual orientation," "hatred" and associated terms like "religious subject." As these definitions evolve, as "marriage" has, they may create further difficulties for religious expression. "Sexual orientation" includes homosexuals and lesbians, of course, but does it also include bisexuals, transsexuals and cross-dressers, as well as pedophiles or bestiality? What about polygamy? How will a court subsequently define the expression "sexual orientation?"

The bill threatens to infringe on long-standing freedoms of expression and religious belief, including the freedom to express reasonable disapproval of homosexual behaviour. The defences incorporated in the Criminal Code have been shown to be unreliable protection for religiously motivated speech.

Bill C-250 attempts to give the members of special interest groups and the politically correct activist judiciary the power of criminal law sanction to persecute those who dare to disagree.

Freedom of speech must be extended not only to those with whom we agree but also to those with whom we disagree. Prosecution, or threat of persecution, will deter the human right to freedom of expression from prevailing.

Madam Justice McLachlin, with the concurrence of Mr. Justice John Sopinka and Mr. Justice Gerard LaForest, described "freedom of expression" in the Charter as the "right to let loose one's ideas on the world." She referred to the "chilling effect" on the exercise of this freedom of expression by law-abiding citizens because of the subjective concept of "hate." In her opinion, criminal sanctions do not operate as a deterrent to hate-mongers, while they chill the free expression of the ideas of "ordinary individuals who, by fear of criminal prosecutions and because of the inherent vagueness of the provision, will refrain from exercising their freedom of expression."

She also said:

Section 319 imposes limits on freedom of expression in relation to the search for truth, vigorous and open practical debate and the value of self-individualization.

In her opinion:

The hate propaganda provision raises serious questions as to whether it furthers the principles and values of social peace, individual dignity, multiculturalism, and equality.

To most Canadians, the principal intent of Bill C-250 appears to be that the expression of "hurtful" words about one's sexual orientation must not be uttered; that, in effect, punishing, hurtful opinions will suppress civil liberties and truth.

Honourable senators, criticism is not criminal. There are already sufficient laws protecting Canadians, and Canadians believe there is no need to expand such protection through ambiguous criminal law. Such an expansion seems to arbitrarily deprive Canadians of their Charter rights at the whims of special interest groups and the court.

Honourable senators, the government has said that the concerns of the religious groups are fully protected because they have amended 319(3)(b) by adding protection for "religious texts." I ask: Why are Canadians still concerned with this so-called religious exemption?

On August 5, 2003, the *National Post* editorial had this to say:

Three years ago, the Ontario Human Rights Commission deemed religious conviction no defence against discrimination on grounds of sexual orientation. Today,

there is a bill awaiting approval...that would make anti-gay "propaganda" a criminal offence. Factor in our activist, Liberal court, and it is clear why people are so concerned about religious freedom.

Honourable senators, if the hate crimes section of the code is to be amended, then it should only be done after an exhaustive debate and not rubber-stamped, as some in the Senate, I believe, and in the other place would like to see done. The opponents of this bill are fighting to protect their freedoms. The government does not seem to understand that politicians and bureaucrats do not grant freedoms. Canadians believe that freedom is their inherent right. Canadians believe that, in Canada, they have the freedom to express their opinions. They have the freedom to criticize their politicians; the freedom to promote issues or agendas that are important to them, to their businesses or their values. Freedoms are the pillars of our democracy.

They believe that their freedom of expression means that they will not be thrown in jail for expressing their opinion. Canadian citizens are free to fully participate in the democratic process and their democracy is one where politicians are expected to defend their freedoms and not abuse them.

Canadians have said that, without explicit protections, this bill could be problematic for a number of common publications, since it may criminalize statements and texts that pertain to homosexuality. There is not much case law to date, but the judicial trend seems to be favouring the interests of one special interest group over the rights of other minority and majority interests.

Canadians fear that ostracized expression could ultimately affect publications of the Christian, Jewish or Muslim and other faith-based communities, and further, that non-specific religious texts, educational materials, teachings and instruction forums may not be permitted and therefore, under the proposed law, statements made in those documents and places could also be subject to criminal sanction.

Some question whether texts such as the Bible or the Koran, when used by someone to promote hatred or advocate genocide, could then be considered hate literature. When the Department of Justice officials appeared at the Bill C-250 committee hearings in the other place, they could not give a definitive answer to this question: Could religious publications be subject to censorship or even prohibition?

Some Canadians sense that the bill will simply, by way of substitution, discriminate against a different group of individuals. If so, that, honourable senators, is not a satisfactory solution. Having driven the Judeo-Christian value system out of Canada's public square, classrooms and our courts, activists now want to drive it out of the church.

Bill C-250 may not be the appropriate legislative response to prevent the expression of hatred towards gay and lesbian individuals. The constitutional rights and freedoms of one group of Canadians should not be bartered away through an ill-conceived proposal to advance the interests of another group.

Alternatively, since sections 318 and 319 of the Criminal Code are exclusive provisions providing protection to only four designated groups, it therefore may discriminate by excluding all other groups from its protective provisions. Perhaps, honourable senators, we ought to consider deleting the list of designated groups set out in sections 318 and 319 and rewriting the sections so that all Canadians will be provided this protection.

Honourable senators, given the concerns of the Canadian public, I am not so certain that "sexual orientation" should be hastily included as an identifiable group in the Criminal Code. I am certain, however, that we must carefully examine this measure, and that will require a bit of time.

In the process of examination, we would be derelict in our duty were we not to ensure that a comprehensive review of all relevant "identifiable groups" be undertaken. Of course, this means also examining the inclusion of national origin, a group I identified earlier in my remarks.

Honourable senators, in a statement that I made in this chamber on this subject at an earlier date, I said:

One of the things we have long been proud of in Canada is our freedom of speech — our ability to express ourselves without fear of being censored because someone or some group disagrees with the views we are expressing, and with this privilege comes the responsibility to avoid publicly speaking out in a way that might incite hateful acts.

The Criminal Code offers no protection to those who may be singled out in hateful verbal attacks merely because they are citizens of a particular nation. Therefore, another identifiable group must be protected, and that is people who can be identified by their national origin. This loophole has real implications. It allows hate-mongers to incite hatred against citizens of other countries. Citizens of all nations deserve the same protections we offer people who might be defined by their race, colour, ethnic origin or religion. Honourable senators, section 318 of the Criminal Code must be amended to protect this group from the hate-mongers.

• (1840)

I urge all honourable senators to rectify this deficiency in the hate crimes law. I urge this place to examine carefully Bill C-250, for most Canadians have difficulty supporting it as it is.

On motion of Senator Stratton, for Senator Tkachuk, debate adjourned.

STUDY ON ISSUES AFFECTING URBAN ABORIGINAL YOUTH

REPORT OF ABORIGINAL PEOPLES COMMITTEE— DEBATE ADJOURNED

The Senate proceeded to consideration of the sixth report (final) of the Standing Senate Committee on Aboriginal Peoples entitled: *Urban Aboriginal Youth — An Action Plan for Change*, tabled in the Senate on October 30, 2003.—(Honourable Senator Chalifoux).

Hon. Thelma J. Chalifoux moved:

That the Sixth Report of the Standing Senate Committee on Aboriginal Peoples be adopted and that, pursuant to Rule 131(2), the Senate request a complete and detailed response from the Government, with the Ministers of Indian Affairs and Northern Development, Justice, Human Resources Development, Canadian Heritage, Health, and Industry; the Solicitor General; and the Federal Interlocutor for Metis and Non-status Indians being identified as Ministers responsible for responding to the report.

She said: Honourable senators, it is with great pleasure that I rise today to speak to the sixth report of the Standing Senate Committee on Aboriginal Peoples entitled, "Urban Aboriginal Youth — An Action Plan for Change." This report represents the first time a parliamentary committee has examined the needs and the condition of urban Aboriginal youth in Canada.

Let me begin by thanking my esteemed colleagues who served with me on the Aboriginal Peoples Committee. I wish to take a moment to acknowledge their hard work, their unwavering dedication and their commitment to this important issue.

As the title suggests, the committee's report is not another study on Aboriginal peoples. Rather, we have sought to formulate a detailed and concrete plan of action to support the economic, social and cultural needs of Aboriginal youth who live in urban areas. Together, the report's 19 recommended actions form the basis of a strategy for reform that is positive, proactive and progressive.

Honourable senators, as you all know, Aboriginal youth living in urban areas face major disadvantages in comparison with other Canadian youth when measured against nearly every social and economic indicator.

For many Aboriginal youth, city life is often an overwhelming experience. Their foothold is uncertain. Their futures are uncertain. While cities may seem to offer great promise, countless arrive ill-prepared to take advantage of these opportunities and promise eventually falls to despair.

Honourable senators, imagine how you would feel to be set adrift alone in a kayak in the Arctic Ocean and you can begin to imagine what it is like for young Metis, First Nations and Inuit youth coming to a city. Those eloquent words, spoken by a young Inuk man, created a powerful image. That image has stayed with us throughout our deliberations. I hope it will also stay with you.

Honourable senators, far too often the lives of these young people become just another negative statistic. We in this chamber must resist the temptation to read these figures idly and search ourselves for a deeper understanding of the real suffering and pain that exists behind those numbers. Unless we come together to address the structural inadequacies that underpin those grim statistics, these youth may be lost to their communities and to us forever.

Minus their potential, we are diminished. We are compelled to ensure that another generation of Aboriginal youth will not be prevented from realizing their promise.

When the committee first began its examination into issues affecting urban Aboriginal youth, we could not have imagined the unshakeable resilience displayed by many of these young people in the face of so many daunting challenges. We were impressed by their strength, their quiet determination, their honesty in talking so frankly about their lives and their sincere desire to overcome their circumstances, however difficult they may seem at times.

Honourable senators, it is difficult. The aimlessness of many Aboriginal youth, often manifested in street crime and youth gangs, is more a failure of Canadian society to provide alternative structures than a reflection of the youth themselves. The lives of Aboriginal youth are profoundly influenced by both historical injustices and current inequities.

Issues facing youth are rooted in a history of colonization, racism, dislocation from their traditional territory, communities and cultural traditions and the intergenerational impacts of the residential school system.

Honourable senators, where barriers exist, we must, in the best interests of Aboriginal youth, act to remove them. A growing and youthful urban Aboriginal population, both socially and economically marginalized, is a matter of significant public policy concern. If the challenges these youths face are ignored, it can and will have negative consequences for both Aboriginal communities and Canadian society as a whole.

Sadly, current government approaches focus on the problem and not the individual. They are at best short-term, band-aid measures which do little to lay the foundations for long-lasting change. This report moves away from reactive programming and

suggests more fundamental change in the areas of policy and jurisdiction, the way youth programs and services are conceived and delivered, as well as the need to work on a multilateral basis involving all stakeholders.

Significantly, the report calls upon the federal government to remove artificial status-based restrictions for post-secondary student assistance so that all Aboriginal youth, irrespective of status, are eligible for assistance. Honourable senators, post-secondary education is essential to improving the economic and social outcomes of Aboriginal youth and in creating long-lasting, permanent and meaningful change.

Higher education, as we all know, is essential to creating a vibrant artificial status-based middle class. It is forward looking and treats youth as a resource to be nurtured rather than a problem to be fixed. Higher education is also critical to ensuring meaningful employment in an increasingly competitive knowledge-based economy. The days when a high school education was sufficient for obtaining gainful long-term employment are behind us. The labour market has changed dramatically in the last decade, due in large measure to technological changes and the processes of globalization. Post-industrial economies place a high premium on knowledge and skills, and never before has the link between education and employment become so vital. Studies such as the Alberta National Round Table on Learning suggest that by 2004 one in four jobs will require a university degree.

• (1850)

Despite some assuring gains, however, Aboriginal youth continue to lag behind the rest of the Canadian population at a time when jobs require more and more education. Ensuring meaningful access to higher education for Aboriginal youth is an investment we make not only in their futures but also in our own futures.

Faced with impending labour shortages, Aboriginal youth — a growing segment of urban populations — are an important resource to help meet labour needs. Young Aboriginal people hold out great promise in being able to bridge the impending gap in Canada's shrinking labour force. An educated and motivated Aboriginal youth could form a dynamic and key component of tomorrow's labour force. Unless we begin to address the structural barriers, this cannot happen.

There is a pressing need for government to invest resources in youth initiatives aimed at improving educational outcomes so that Aboriginal youth acquire the training and skills needed to obtain meaningful employment. It is with in this mind that we also recommend that federal programs aimed at increasing labour market participation of Aboriginal youth provide long-term strategic training and that the youth and urban component of the Aboriginal Human Resources Development Strategy be increased to correspond to the need and the importance of this issue.

Honourable senators, as a society, we can question our responsibility for the misguided policies of the past, but should we not be morally and socially responsible for restoring to Aboriginal youth today that which should never have been taken from those of yesterday — their hope for the future and a chance to take their rightful place in it? A university education in itself may not suffice in undoing the numerous social ills that plague so many innocent youth, but it is an important stepping-stone to restoring their well-being and confidence. A well-educated Aboriginal youth will be less vulnerable to a range of social and economic factors that erode their ability to be full, productive members of Canadian society and will be better able to contribute to the capacity of their own communities and institutions. To believe we owe them anything less is unconscionable.

Honourable senators, for things to improve, the jurisdictional framework must be clarified. The current federal approach to Aboriginal policy no longer mirrors the geographical reality of Aboriginal peoples, two thirds of whom live off-reserve today. The increasing urbanization of Aboriginal peoples is amplifying pressures toward the need for a new direction in policy development. The demographic shift of the Aboriginal population to cities has profound implications concerning federal responsibility for Aboriginal people. In practical terms it has meant that over time the federal government has seen its responsibility extend to fewer and fewer people. Of the nearly \$8 billion that the federal government will spend on Aboriginal programs, only \$270 million will flow to urban and off-reserve programming. This has resulted in an inferior level of services for urban Aboriginal people and youth.

Honourable senators, in a significant move away from current federal policy that presently limits government responsibility to on-reserve status Indians and the Inuit, this committee calls upon the federal government to recognize the rights of First Nations people when they leave their reserve. In addition, we recommend that the federal government must take formal steps to clarify and resolve the rights of the Metis people of Canada, the most highly urbanized of all Aboriginal peoples.

Although constitutionally recognized as one of three Aboriginal groups in Canada, the Metis do not enjoy the same rights as First Nations people and the Inuit. This report recommends that the federal government enter into formal negotiation with the Metis people to clarify outstanding jurisdictional and rights issues. As honourable senators are all aware, the recent Supreme Court decision in *Powley* makes this recommendation all the more timely and relevant, and we urge the government to act on it immediately.

Honourable senators, this failure of federal and provincial governments to accept, clarify and coordinate their jurisdictional roles and responsibilities has resulted in what the Royal

Commission on Aboriginal Peoples called a “policy vacuum,” with the needs of urban and off-reserve Aboriginal people being the first casualty in this jurisdictional no man’s land. It is becoming increasingly difficult for governments ignore the many challenges, needs and issues facing our urban Aboriginal population. Not only do Aboriginal youth constitute a significant percentage of urban populations, especially in the Western provinces, but on the whole they have higher rates of joblessness, less formal education, more contact with the justice system and are in poorer health than their non-Aboriginal counterparts. It is clear to us that outstanding jurisdictional issues contribute significantly to the poor social and economic conditions experienced by so many Aboriginal people and youth in this country. This must change and our report outlines steps upon which to create that change.

Honourable senators, of all the issues affecting urban Aboriginal people, some of the most pressing and urgent are the needs of the Aboriginal youth. We are struck by the absolute necessity of addressing their needs, particularly those estranged from their cultural heritage and the broader community in which they reside. The question we have sought the answer is how to foster a more constructive dynamic for urban Aboriginal youth and mitigate their social exclusion. Senators, there is no single answer. Rather, the solution is provided by a weave of supports comprised of education, recreation, urban transition services, labour market readiness, sound parenting skills, as well as strong community, cultural and family supports. Without these necessary supports, young Aboriginal people and their families can find it difficult to overcome the challenges they face and to achieve a quality of life comparable to other Canadians.

This report makes several recommendations that help create opportunities for youth and alleviate some of the pressures they face in the city. Notably, we recommend that urban transition services to help youth adjust to city life be made available; that measures to address the high dropout rates be implemented; that community-based youth programs, which promote sound parenting skills, be developed; and that approaches for employment and training programs be long term.

In addition, the committee’s report recommends that a national public awareness campaign for Aboriginal youth and pre-teens be designed to address youth sexual health and to promote healthy sexual practices and the prevention of teen pregnancies. Too many of our kids are having kids. Important research suggests that Aboriginal youth report using little or no contraception. Pregnancy is only one of the unintended results. This also puts youth at risk of a number of sexually transmitted diseases, including HIV and AIDS. We are troubled that while the number of AIDS cases has shown a decline in the general population, the number of AIDS cases in the Aboriginal community and among urban Aboriginal youth has risen dramatically. This is a cycle we must break.

I believe strongly that the recommended actions proposed in this report form a basis upon which greater opportunities for urban Aboriginal youth can be realized. In order to obtain these benefits, however, the sustained commitment of all governments and their respective departments is essential. I believe that a genuine window of opportunity exists to implement the kind of positive change needed to ensure that another generation of Aboriginal youth is not sacrificed on the altar of narrow policy thinking.

The committee has worked out a realistic plan of action and detailed concrete steps that, if implemented in a serious and dedicated fashion, could lead to meaningful reform and long-lasting change. This report maps out a strategy for positive and meaningful change. It helps to build positive supports around urban Aboriginal youth and their families.

The Hon. the Speaker pro tempore: Honourable senator, I regret to say that your time has expired.

Senator Chalifoux: Honourable senators, I ask for leave to continue.

The Hon. the Speaker pro tempore: Is it agreed, honourable senators?

Hon. Senators: Agreed.

Senator Chalifoux: Honourable senators, the report moves away from reactive programming that sees Aboriginal youth as problems to be fixed, to create opportunities upon which their talents, aspirations and hopes for a better life can be realized.

• (1900)

Honourable senators, this report is not the end of road. It is only the beginning. All levels of government and Aboriginal organizations must take action now if we are to succeed.

On motion of Senator Stratton, for Senator Johnson, debate adjourned.

CANADIAN ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS CANADIAN ASSOCIATION OF FINANCIAL PLANNERS

PRIVATE BILL TO AMEND ACT OF INCORPORATION— REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fourteenth report of the Standing Senate Committee on Banking, Trade and Commerce (Bill S-21, to amalgamate the Canadian Association of Insurance and Financial Advisors and The Canadian Association of Financial Planners under the name The Financial Advisors Association of Canada, with an amendment) presented in the Senate on October 30, 2003.—(*Honourable Senator Kroft*).

Hon. Richard H. Kroft moved the adoption of the fourteenth report of the Standing Senate Committee on Banking, Trade and Commerce.

[Senator Chalifoux]

He said: Honourable senators, the purpose of this special act is to amalgamate the Canadian Association of Financial Planners and the Canadian Association of Insurance and Financial Advisors. The new name of the amalgamated corporation will be the Financial Advisors Association of Canada, to be known as Advocis.

Hon. Senators: Question!

The Hon. the Speaker pro tempore: It was moved by the Honourable Senator Kroft, seconded by the Honourable Senator Moore, that this report be adopted now.

Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and report adopted.

The Hon. the Speaker pro tempore: When shall this bill be read a third time?

On motion of Senator Kroft, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

BUSINESS OF THE SENATE

Hon. Anne C. Cools: Honourable senators, could we have an indication of how much longer we will be sitting? I know that at six o'clock, we agreed to not see the clock. However, I understood at that time that the intention was to complete the discussion of Bill C-459 in the Committee of the Whole.

I did not think that we would just continue sitting into the wee hours of the evening. Not that I am a complainer, but we have not had dinner.

Could we have an indication of how long we will continue? It would be useful. Some of us may want to withdraw permission to not see the clock.

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, when I was asked if we were going to sit late, it was mentioned that perhaps we would sit until midnight, like last week — although we did not sit until midnight, just until 11:15 p.m. This leads us to the question of what time the honourable senators are prepared to sit until. However, the Senate is currently debating a question of privilege raised by Senator Kinsella. He is currently defending his bill in committee. In my opinion, we must, without agreeing in advance to his question of privilege, continue to sit so he can return to present his question of privilege, which he is expected to do before 8 p.m.

Once that has been done, naturally, the question of privilege must be debated and I think that, afterward, there would be agreement to stand all items remaining on the Order Paper.

[English]

Senator Cools: Honourable senators, perhaps a better solution would be for us to postpone consideration of Senator Kinsella's question of privilege until tomorrow.

I am asking Senator Robichaud to do that. We do not do that very often, but it has been done. Due to the lateness of the hour, the question of the debate on the *prima facie* question of privilege has been bumped to the next sitting day.

I understand, based on what Senator Robichaud has said, that Senator Kinsella is, at this very moment, before a committee testifying on his bill. Therefore, I do not think that Senator Kinsella would object if we were to simply bump the item until tomorrow. There is ample precedence for that. Perhaps honourable senators would agree to do that.

[Translation]

Senator Robichaud: Honourable senators, I am not prepared to accept this, simply because a question of privilege has been raised about a meeting held by a committee on Friday, if I am not mistaken, and it deserves to be heard. A report was tabled in the Senate concerning a bill, and it is important to hear this question of privilege.

[English]

Senator Cools: Honourable senators, I submit that it is the will of this chamber to hear the question of privilege tomorrow, not today. That approach would cause no prejudice whatsoever to the question.

Honourable senators, we have been sitting marathon hours last week and today. It is clear that we have a difficult week ahead.

I was impressed by Senator Grafstein's and Senator Poulin's suggestion that we not see the clock at six o'clock to accommodate the Committee of the Whole on Bill C-459. Perhaps we should have seen the clock, but it is a little late now.

Honourable senators, we can stop everything now and resume tomorrow at this point. There would be no prejudice to Senator Kinsella or his question. I suspect that, if he is doing double duty in a committee currently, he might be relieved to know that we would be prepared to allow him to speak tomorrow.

Yes, it is a question of privilege, and it is important, but I am sure that it will be just as important tomorrow.

The Hon. the Speaker *pro tempore*: Orders of the Day.

Senator Cools: It is not allowed that I be merely ignored. I am asking a question of Her Honour. We are sitting at a time when it would appear that we should not be sitting because we agreed not to see the clock to complete a specific task. That position to not see the clock cannot be taken as carrying into perpetuity.

The chamber considered the proposition that we not hear the question of privilege today, and that we hear it tomorrow.

The Hon. the Speaker *pro tempore*: Are you raising a point of order, Senator Cools?

POINT OF ORDER

Hon. Anne C. Cools: Honourable senators, this chamber gave unanimous consent to not see the clock at six o'clock for a very specified set of purposes. Clearly, when honourable senators agreed to do that it was their intention and their expectation that those items on the Order Paper would have been dealt with and then senators would have been allowed to adjourn to have something to eat or to do whatever else they are supposed to do.

Honourable senators, I do not think that it is proper or in order that, because that agreement was given to be able to consider Senator Poulin's and Senator Grafstein's measure, Bill C-459, that permission then be taken to extend to every other order.

Perhaps some honourable senators would not have given unanimous consent if they had understood that this would happen.

• (1910)

Honourable senators, perhaps the Senate should consider adjourning now and allowing Senator Kinsella to raise his question of privilege tomorrow.

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I do not believe a point of order can be justified. When leave was granted, I was asked to list the items I intended to call. I replied to Senator St. Germain that I certainly would wish to call Bill C-250 and that at that time we would see what disposition was made. However, I did not make any promises to stand all the following items.

I believe we are continuing, mainly, to satisfy Senator Kinsella, who is before the Committee on Official Languages at present, speaking about his bill. I believe that by 8 p.m., we will be able to continue the debate. I hope that Senator Kinsella will then be able to return to this chamber in order to raise his question of privilege.

[English]

Senator Cools: Honourable senators, we have had situations in the past where, due to the hour of the day, consideration of questions of privileges under rule 43(5) have been bumped over to the next day. It seems to me, honourable senators, that we are coming into an extremely busy time where the parliamentary agenda is well packed and very well stocked. When honourable senators ask at six o'clock that we not see the clock, and when those undertakings are made, and when honourable senators have granted their permission for the Senate to continue to sit, it seems to me that that grant should be respected and it should not be turned around and abused or violated.

It is crystal clear to me, because I was sitting here, that at the time consent or leave was granted at six o'clock not to see the clock, honourable senators did not expect to be sitting for many hours thereafter. There was a clear understanding, at least on my part, that we were allowing this fast track to let Senator Grafstein's bill go ahead.

It is not proper, Your Honour, and I would submit it is not in order, to proceed in this way. If this is how we are to be proceeding, you can be sure many of us will think a little harder and longer about granting consent at six o'clock. You should put that into your kitty for consideration. There is no reason in the world for us to be sitting here tonight. We sat many nights —

The Hon. the Speaker: I take it that the point of order is that the agreement not to see the clock was conditional, but I did not take it that way, I must say, honourable senators. Accordingly, I think that when we agreed not to see the clock, it was just that. Senator Cools is right, however, in that when we do not see the clock, it is often because we anticipate that we will complete our work in a short time.

As to the matter of conditional unanimous consent, that would have to be worded very carefully, and in this particular case I did not take it that way when I put it to honourable senators. In fact, I recall distinctly mentioning that the question of privilege was still a matter before us. Questions of privilege, by their very nature, I believe, have a certain priority. Accordingly, Senator Cools, regrettably, I find no point of order.

Senator Cools: There is no such thing as conditional unanimous consent. There is no such thing as a conditional agreement. However, there is such a thing as the premise and the reasons for which consent was granted, and that is what I am talking about, honourable senators. Consent was granted to allow Senator Grafstein and Senator Poulin to move ahead on Bill C-459. At the time it was granted, we clearly understood that we would be adjourning shortly thereafter. I would submit, honourable senators, that when these kinds of agreements are given or granted, they should be respected and they should be honoured, and they should not be abused.

UNITED STATES BALLISTIC MISSILE DEFENCE SYSTEM

MOTION RECOMMENDING THE GOVERNMENT NOT TO PARTICIPATE—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Roche, seconded by the Honourable Senator Plamondon:

That the Senate of Canada recommend that the Government of Canada refuse to participate in the U.S.-sponsored Ballistic Missile Defence (BMD) system, because:

1. It will undermine Canada's longstanding policy on the non-weaponization of space by giving implicit, if not explicit, support to U.S. policies to develop and deploy weapons in space;
2. It will further integrate Canadian and American military forces and policy without meaningful Canadian input into the substance of those policies;
3. It will make the world, including Canada, not more secure but less secure.—(*Honourable Senator Graham, P.C.*)

Hon. B. Alasdair Graham: Honourable senators, I thank Senator Roche for introducing the motion that reads that the Senate of Canada recommends that the Government of Canada refuse to participate in the U.S.-sponsored ballistic missile system for three closely argued reasons, all of which I will try to touch upon in my remarks this evening.

Senator Roche's remarks were informative and, as always, formed from a background of considerable experience on defence and security matters of great importance to all Canadians. I listened with the greatest of interest to Senator LaPierre's remarks in support of the motion, and I thank him for contributing with such humanity to the debate.

It has been said that perception is reality. On no issue is this observation more applicable than the complex question of ballistic missile defence. In my opinion, it is at present impossible to predict where and how the ballistic missile defence system, so dependent on a complex of technologies and budgets that are in the process of development, will evolve over time. As we have seen time and time again with regard to the issue of U.S. defence spending, a budget line for the missile agency may very well not translate into official American policy. Over a decade ago, we were told that a viable missile defence screen would be in place by the turn of the century. The world waited. Time frames came and went with a kind of consistency one expects from the politics of checks and balances. As administrations come and go, I believe Canada must respond to American policy on this issue one day at a time.

In the meantime, concerned Canadians have put forth a plethora of arguments in their opposition to BMD. One of the most important centres on the theory that U.S. ballistic missiles may inevitably involve the testing of weapons in space. Senator Roche contends that BMD will be one package leading to U.S. space-based dominance and that Canadian participation in missile defence, no matter how modest, will constitute an endorsement of U.S. intentions to weaponize space.

Senator LaPierre rejected — and quite properly — Canada's endorsement of the so-called vortex of American militarism and unilateralism that seems to stem from Senator Roche's theory. If I thought the vortex was in fact the reality, and if I thought for one second that U.S. Air Force Secretary James Roche was stating official policy, I too would have grave concerns. Unfortunately, while all of us search for simple answers to our bilateral relations with the colossus to the south, such simple answers are not to be had. Let us take a quick look at emerging U.S. policy on BMD and the so-called weaponization of space from another perspective.

First, let us ask some legitimate questions. Is there any evidence whatsoever that the U.S. intends to violate its treaty obligations in the Outer Space Treaty with regard to the access to, and the use of space by, any nation for peaceful purposes? I do not know of any.

Is U.S. policy really anchored in a conspiracy designed to establish an imperial power in space with a war-fighting capability seen only in *Star Wars* or, as Senator LaPierre suggests, a transformation of space into a military zone where the U.S. can attack anyone at will? Can we not say, perhaps with considerably more equanimity, that the U.S. is concerned that its dominance in outer space is, in fact, highly questionable, the more so as space is now so vulnerable to threats emanating from many countries which have the capacity to launch a missile with a nuclear warhead which has the capacity to strike at outerspace assets and which, in so doing, will do a great deal of damage to Western economies, ours included?

• (1920)

How do we perceive all this? Is BMD about dominance or protection? With regard to war fighting capabilities, won't attempts to go to war in space leave a real mess up there? Who pays the biggest price for that? Could one not argue that the United States will pay the biggest price? What interests would the U.S. conceivably have in starting one? Where are the certainties in all of this? I am afraid the situation is far too complicated to pose the issue of BMD in terms of the so-called vortex of militarism.

The one thing we do know, honourable senators — and we know this with certainty — is that the Bush administration has made BMD one of its top security priorities. It has declared that, by the autumn of 2004, it will develop an initial set of missile defence capabilities for protecting the continental U.S. and, possibly, proximate Canadian territory. I might add that this will include ground- and sea-based interceptors.

The U.S. has concluded an agreement with the U.K. to upgrade the Flyingdales early warning radar and is now in discussions with Denmark to update the early warning radar equipment in Greenland, which will permit the US complete radar coverage of North America.

Canadians may then take some comfort from these multilateral developments with regard to BMD. Maybe we are not home alone, after all, with our gigantic muscle-bound neighbour to the south. I do not have to remind honourable senators that the U.S. withdrew from the Anti-Ballistic Missile treaty last June and that President Bush and President Putin then signed a treaty that will lead to significant reductions in their nuclear arsenals. ABM had been a legitimate preoccupation with many critics of a missile defence system, but no longer.

Further, U.S. offers to share technology may lead to some Russian enthusiasm for the project, a development that even 18 months ago would have been unimaginable and would have had major implications for the geopolitical landscape. One might speculate that, in the long term, the U.S. may decide to open a broad package of initiatives toward Russia as part of the engine of missile defence, but this kind of portent suffers from the same kinds of uncertainties as almost all aspects of BMD.

In fact, it is clear to me that it is most unwise at this point in time to make vast generalizations about issues such as U.S. intent, the international fallout of BMD, and so on — generalizations that can be queried day by day. We must deal with real possibilities as they arise, lest we find ourselves in the position of Kierkegaard's man, "who lived his life in increasing degrees of abstractions only to wake up one morning to find that he had died."

Some of that whole jungle of real possibilities centres on the dangerous in which we live. Honourable senators are aware that potential terrorist strikes in North America can take many forms. The ever present threat of vessels carrying nuclear or chemical weapons and the horrifying prospect of detonation in an American or a Canadian harbour is only one. In the greater scheme of things, BMD is only part of a complex arsenal designed to deal with present dangers.

Proliferation of weapons of mass destruction and their delivery systems is a growing problem in our time. There are those who argue that Canada is unlikely to be a direct target of a ballistic missile attack launched, for example, by the irrational leaders of a rogue state. However, the proximity of our population to the United States and the poor accuracy of first generation intercontinental ballistic missiles — both these factors — mean that Canada shares largely the same threat as the United States. Can we afford, as Canadians, to take it for granted that an attack on Detroit would not mean an attack on Windsor, or that an attack on Buffalo would not mean that Toronto would be devastated? Although we know there is no blanket degree of protection from BMD from rogue states or accidental missile launches, it is only common sense to see that a partial defence is much better than none.

In my opinion, those who argue that missile defence can only be seen in terms of preconceived notions of Canada's so-called landlord-tenant relationship with the great republic, are ignoring the larger process of the continuing definition of our national interests at their peril. Think of it this way: Canada has lived for decades with a U.S. security guarantee for the continent, a guarantee that has translated into very little cost to us.

One might argue that the "free ride" theory held by some Americans is unfair to Canada, yet there is some truth in it. We spend approximately \$300 million annually on NORAD, about 10 per cent of the total cost of the alliance. According to the Canadian military officials I met when I was a part of a parliamentary delegation visiting Cheyenne Mountain in Colorado Springs, our contribution is considered to be a token amount for which Canada receives far more in return in aerospace intelligence. Over the decades, NORAD has provided essential intelligence gathering and surveillance of our territory. I believe we must continue to play an integral role in the defence of North America and continue to have a strong voice in the North American aerospace command, which, since 1958, has served us well in the joint defence of this continent.

I come back to the point raised by Senator Roche that the immediate issue confronting Canada is a potential negotiation of involvement in one component of a much broader U.S. missile defence system. As Dr. James Fergusson, deputy director of the Centre for Defence and Security Studies at the University of Manitoba pointed out to the House Foreign Affairs Committee last June, the primary issue we must concern ourselves with at present is:

...the relationship between this operational development (the assignment of command and control) and the issue of the future of NORAD, particularly the assignment of command and control for that system relative to NORAD....it does not include discussions or negotiations about Canadian involvement in other aspects of the Laird U.S. missile defence. (Indeed, we are not party to those anyway.)

Dr. Fergusson went on to say:

...space is entirely separate from Canadian involvement right now. Space is entirely separate from NORAD by virtue of one decision made last year, which was the decision on the part of the U.S. in its unified command plan to separate space command from NORAD and assign space command and merge it with strategic command located in Omaha, Nebraska....Space is not on the table, and it is presumptuous of Canadians to believe that space would even be put on the table, even if Canada thought differently. The U.S. is not trying to trap Canada into space...the U.S. is fully aware of longstanding Canadian policy on the weaponization of space and has separated it from the issue of continuing cooperation on the aerospace defence of North America.

As Dr. Fergusson further points out, what Canada is looking at is a continuation of aerospace defence cooperation, aerospace surveillance and control within NORAD, something we have

historically done as a partner in defence, that is, our participation in early warning. In other words, Canada would continue to provide central command and control centres where data from sensors would be fed out to American interceptor sites. Failure to contribute at all would mean that the collaboration of Americans and Canadians at Cheyenne Mountain — something which, as I have indicated earlier, I have personally seen — a partnership with deep roots between brothers and sisters from both sides of the world's longest, until recently, undefended border would disappear, becoming a rather sad chapter in a history book about lost opportunities.

• (1930)

As Foreign Minister Bill Graham put it so well recently, we cannot ask the questions unless we have the conversations. We cannot set out any pre-conditions if we cannot negotiate. Missile defence is now a reality; the U.S. will field an initial system by the autumn of 2004. At the moment, discussions are ongoing between our two countries and there is no timetable to conclude them. No decisions will be made by the Government of Canada until its assessments are complete.

However, Senator Roche tells us in his speech that this idea of discussion is "a fanciful and dangerous delusion — that the Bush administration will proceed with whatever policies they wish, irrespective of the positions of U.S. allies or the international community at large.

The Hon. the Speaker *pro tempore*: Honourable senators, I regret to inform the Honourable Senator Graham that his time for speaking has expired.

Does he request leave to continue?

Senator Graham: Yes, and I will be as quick as I possibly can.

Hon. Senators: Agreed.

Senator Graham: I will do my best.

Senator Roche points to the Iraq example as a cogent example of this logic. I share Senator Roche's respect for the stand taken by Prime Minister Chrétien against the U.S. led war on Iraq, which contravened the will and authority of the UN Security Council.

In a speech I gave in this chamber February 25 last addressing the motion, again put forward by Senator Roche, with regard to the sanctioning of military action against Iraq under international law, I quoted part of Lester B. Pearson's acceptance speech on receiving the Nobel Peace Prize in 1957. In order to achieve peace, he said, what is needed is a new and vigorous determination to use every technique of discussion and negotiation that may be available for the solution of the tangled, frightening problems that divide us today in fear and hostility.

I might add that on the issue of BMD, we are at the table with a friend, albeit quixotic in some cases, but nevertheless a friend. We are one of few countries on the face of the earth to be closely attuned to American sentiments and frustrations and hopes; we share so many of the same values and challenges and history and ideals. In spite of the fact that we share, at present, a rather small negotiating table with the United States on BMD, does it make any sense to say to our sometimes ambivalent neighbour and ally, "Sorry, but we have so many problems with all of this that we must turn off the lights and say conversation over"? Does that kind of solution really make any sense? I, for one, do not see any.

As I have just said, honourable senators, our unique relationship with the land of the free and the home of the brave allows us to bring to the negotiations issues of immense significance for the global community. The problem of nuclear proliferation and the pressures on countries in a continuing state of conflict with the United States to acquire new weapons systems is a fundamental challenge of our time. What do we gain by removing ourselves from the table when we are one of the few countries on earth who can remind the U.S. that a way for it to dispel the proliferation pressure is for it to ratify the Comprehensive Test Ban Treaty, and so on?

Does sitting at a table with the United States, asking the questions, applying the day-to-day influence, using the carrot and whatever sticks we can come up with, does that interaction mean we are endorsing a major expansion of a new weapons system that would only serve to promote escalation? Does that mean that our fine international reputation as a country that has been a major force for non-proliferation and restraints, of treaties aimed at the elimination of land mines and covenants banning chemical and biological weapons — does that mean that in some nefarious way our reputation is blighted? Does that mean that our well-earned reputation as a peacemaker and peacekeeper in all parts of the globe and that the respect in which our flag is held across the planet evaporate? No, honourable senators — I would say an emphatic no.

Indeed, I believe that the nations of the world would find only additional insecurity in a tormented world if Canada — the bridge to the heart and mind of America — were to say, "Look, we have a lot of questions, but we lack the will and the determination to keep the game alive." Then what we are talking about is irrelevance. Irrelevance is not the path I would wish for Canada. That is not the Canada I know. That is not the kind of Canada any of us in this chamber would want to pass on to future generations as a sad and tragic legacy.

We must keep in mind that any participation we potentially agree to undertake in BMD will be only one path in the global Canadian diplomatic engagement to dissuade those who would proliferate missiles and missile technologies. Canada is a founding member of the Missile Technology Control Regime to counter

missile proliferation. We were instrumental in developing the Hague code of conduct, which establishes the only existing standards regarding ballistic missiles and related activities.

Our longstanding opposition to the weaponization of space is renowned for its veracity in international fora. Time precludes a lengthier list of our multilateral efforts, but I want to mention David Haglund, Director of the Centre for International Studies at Queen's University, who argues that the multiplicity of challenges Canada faces on security issues with the United States in the post-September 11 world provide unprecedented opportunities and challenges for policy-makers. I want to quote Dr. Haglund:

Canada will emerge as a country of enormous significance for American physical security for the first time since the early days of the Cold War and the contradictions of policy-making will be exacerbated as the trade-offs become more clearly identifiable. In that new climate, it will be more than a bit ironic that policy-makers in Ottawa should find themselves pining for a more innocent yesterday, when all they had to worry about was developing the most appropriate response to the MND(BMD) challenge.

I will always remember, honourable senators, a trip I made to the United Nations Headquarters in New York and my discovery of the famous statue of St. George slaying the nuclear dragon — a composite of the remnants of destroyed American and Soviet missiles. Those missiles were not destroyed because nations with differences stood up from the table, turned out the lights and went home. They were destroyed because two superpowers of the Cold War era recognized that there is never any substitute for the kind of vigorous determination to use every technique of discussion and negotiation available to us, as Mr. Pearson reminded us in 1957.

Without this continuing engagement, we stand without voice on the continent and will one day awake to the realization that Canada has surrendered its future without a single gunshot ever having been fired.

I thank honourable senators for their attention.

Hon. Douglas Roche: Will Senator Graham accept a question?

Senator Stratton: Time is up.

The Hon. the Speaker: I think the answer is no, Senator Roche.

Senator Roche: I will confine myself to one short question. I do appreciate the hour. I would like to congratulate Senator Graham. His speech was of the customary high level that one comes to expect of Senator Graham.

Would the honourable senator agree that he has given the antiballistic missile treaty very light treatment in his speech for a very good reason: It was put in place more than 30 years ago to stop the development of new offensive weapons. Would the honourable senator agree that, when he says space is not on the table, in fact the missile defence agency, in its own documentation, which is available on the Web site, states specifically that the first stage of BMD will lead to testing in space bed? Would he agree that Mr. John Polanyi, also a Canadian Nobel laureate, said that ballistic missile defence is a conveyor belt — his words — for weapons in space?

• (1940)

Finally, would he agree that many scientists are right when they say that BMD will not work, that analysts are right when they say it is destabilizing in international security affairs, and that ethicists are right when they say that the enormous sums to be spent on ballistic missile defence are distracting the world from investing in true human security?

Senator Graham: Honourable senators, I cannot give a “yes” or a “no” to those questions because there are varying opinions on the very important questions asked by Senator Roche. I would have to ask him to read and reread my speech. We will get various opinions across the spectrum from scientists, from professors, from experts, and even from people such as yourself, Senator Roche, and in the end we have to weigh all the evidence.

Canada is examining that evidence. It is analyzing all of that evidence before it comes to any conclusion. I am sure the honourable senator's views will be taken into consideration as well. I thank him for his questions and his participation.

On motion of Senator Rompkey, debate adjourned.

FOREIGN AFFAIRS

MOTION TO AUTHORIZE COMMITTEE TO MEET DURING ADJOURNMENT OF THE SENATE WITHDRAWN

On the Order:

Resuming debate on the motion of the Honourable Senator Stollery, seconded by the Honourable Senator Watt:

That the Standing Senate Committee on Foreign Affairs, in accordance with Rule 95(3a) of the Rules of the Senate, be empowered to sit on October 14 and 15, 2003, even though the Senate may then be adjourned for a period exceeding one week.—(*Honourable Senator Di Nino*).

Hon. Consiglio Di Nino: Honourable senators, allow me a brief moment to withdraw this motion standing in my name on page 11. It is no. 147 on the Order Paper.

[Senator Roche]

Obviously, we were asking to sit several weeks ago. The time has passed and I withdraw my motion.

The Hon. the Speaker: Honourable senators, is leave granted?

Hon. Senators: Agreed.

Motion withdrawn.

THE SENATE

MOTION TO CREATE SPECIAL COMMITTEE TO OVERSEE IMPLEMENTATION OF BROADCASTING PROCEEDINGS ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Gauthier, seconded by the Honourable Senator Fraser:

That the Senate approve the radio and television broadcasting of its proceedings and those of its committees, with closed-captioning in real time, on principles analogous to those regulating the publication of the official record of its deliberations; and

That a special committee, composed of five Senators, be appointed to oversee the implementation of this resolution,

And on the motion in amendment of the Honourable Senator Robichaud, P.C., seconded by the Honourable Senator Gauthier, that the motion be referred to the Standing Committee on Internal Economy, Budgets and Administration; and

That the Committee report no later than May 27, 2004.—(*Honourable Senator Kinsella*).

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I concur with Senator Robichaud, that his motion in amendment referring the matter to the Standing Senate Committee on Internal Economy, Budgets and Administration is a good idea.

The Hon. the Speaker: Is the house ready for the question?

There is a main motion and an amendment. I will put the amendment first.

It was moved by the Honourable Senator Robichaud, P.C., seconded by the Honourable Senator Gauthier, in an amendment to the main motion, that the motion be referred to the Standing Senate Committee on Internal Economy, Budgets and Administration.

Is it your pleasure, honourable senators, to adopt the motion in amendment?

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

Motion in amendment agreed to, on division.

The Hon. the Speaker: I will put the motion as amended.

It was moved by the Honourable Senator Gauthier, second by the Honourable Senator Fraser:

That the Senate approve...

An Hon. Senator: Dispense!

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion as amended?

Some Hon. Senators: Agreed.

An Hon. Senator: On division.

Motion, as amended, agreed to, on division.

QUESTION OF PRIVILEGE

The Hon. the Speaker: Honourable senators, we have now completed Orders of the Day. In accordance with our rules and the proper notice given earlier today, I call on Senator Kinsella with respect to his question of privilege.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I rise on the question of privilege to which I gave written notice earlier this day, pursuant to rule 43(3), and an oral notice pursuant to rule 43(7). It arises from an action taken on Friday, October 31, by the Standing Committee on Rules, Procedures and the Rights of Parliament. This is, therefore, the first opportunity at which this question could be raised.

The facts, very briefly, are understood by honourable senators. They are as follows: The Steering Committee of the Rules Committee met. A majority of the members of the Steering Committee decided that the committee would meet outside its assigned time slot. No announcement was made at the regularly scheduled meeting of the committee on Wednesday last week to discover if this decision reflected the will of the committee. Other committees were meeting in their regular time slots at the time selected by the majority on the Steering Committee. Several senators found themselves in a scheduling conflict. As a result, a point of order was raised in this chamber regarding the propriety of calling meetings outside their assigned times and without adequate or proper notice.

Following a number of interventions, His Honour, at the time, reserved his ruling and, as honourable senators will recall, did give his ruling earlier today.

On Friday, October 31, the Rules Committee met again to hear from additional witnesses who might have become available on very short notice and to consider Bill C-34, clause by clause. The committee met. It considered Bill C-34 clause by clause, and has now purportedly reported the bill back to this chamber without amendment.

It is my contention, honourable senators, that the meeting of the Standing Committee on Rules, Procedures and the Rights of Parliament held on Friday, October 31, was improper. It was a contempt of this chamber and it was a contempt of Parliament. I am using the term "contempt" in its parliamentary sense.

My privileges were breached, as were those of each and every member of this chamber. Put succinctly, the question of whether or not the Rules Committee meeting held Thursday, October 30, outside its assigned time slot and in conflict with numerous other committee meetings being held during the normal course of business at their assigned times, was in a sense *sub judice*.

Honourable senators will recall that the Speaker had taken the matter under advisement. In this chamber, the decision of the Speaker is the decision of the chamber. It can be overturned by a majority vote pursuant to rule 18(4) if senators do not agree with the Speaker's ruling. However, the outcome one way or the other is the decision of the Senate of Canada. It may be an expressed decision, as when a vote is held, which either upholds it or overturns it, or it may be by implication, when the decision is not challenged, as is usually the case, although, as we saw earlier this year, not always the case.

• (1950)

Holding a meeting while the validity of a previous meeting has been taken under advisement by the Speaker carried with it, at least in our view, the clear implication that the ruling of the Speaker and, thus, of this chamber, is irrelevant. My contention is that this is an improper action taken in contempt of the chamber itself.

When the Speaker reserves his ruling within the chamber, the subject matter of the ruling is held in abeyance pending his decision. This was our understanding and is the reason we felt the meeting on Friday was improper. It was, if you like, checkmated or held in abeyance because the whole matter was held in abeyance with the Speaker having reserved his decision.

The reason for doing so is clear. The Senate should not and cannot risk being put in the position of having to backtrack and undo things that have been done, particularly as there may be instances where the actions taken cannot be undone, as when a bill has been passed and given Royal Assent.

In deciding whether a contempt has occurred in this instance, the conclusion of the Speaker's ruling today that a point of order was not well-founded is itself not dispositive of the issue. The contempt occurred because the meeting took place while a ruling was pending.

An action was subsequently taken, namely, the tabling of a report based on the meeting of Friday, October 31, at which the bill was considered clause by clause. However, that tabling took place when the chamber was attending a ruling by the Speaker. Remember, the chamber, if it did not like the ruling, could have overturned that ruling.

That in and by itself makes it patently clear that the tabling of the report in this chamber today, in the very chamber where the matter is under reserve for a ruling by the Speaker and by the chamber, has been improper.

The committee reported the bill without amendment, even though the Speaker's ruling might have required the committee to rehear the witnesses in a properly held meeting. The fact that the Speaker did not so rule cannot and does not have the effect of retroactively righting the wrong that was done.

Honourable senators, the contempt is clear. The privileges of all honourable senators were thereby breached.

I am prepared to move an appropriate motion, if His Honour finds that there is a prima facie case of breach of privilege, although I would note that as it is the Rules Committee which is the subject of this question of privilege, I would not be moving to refer this matter, as is envisaged by the rules, to the Rules Committee for resolution.

Some Hon. Senators: Hear, hear!

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I do not believe there has been a breach of privilege. The meeting held last Friday was conducted in accordance with the practice of the Senate. The decision had been made by the steering committee. No rule was broken during this meeting.

His Honour said so in his ruling on the point of order today. The fact that the committee met is not an affront to the Senate; I think this is going far enough. No motion or order of the Senate precluded this committee from meeting. I think that everything was done according to the procedure; notice of the meeting had been given.

All the honourable senators who wished to attend could do so, and nothing was done to preclude them from attending. All those who wanted to speak did. The honourable senators who wanted to vote and were members of the committee did vote. The committee has acted in accordance with the *Rules of the Senate*.

I see no breach of the privileges of the Senate or the honourable senators. I think that everything was in order and I do not see any question of privilege.

[English]

Hon. John Lynch-Staunton (Leader of the Opposition): Your Honour, I am conscious of your ruling on Senator Kinsella's last point of order that you have no authority over anything but the rules in this place. However, I will still plead that you should reconsider that.

[Senator Kinsella]

I remind Your Honour that even the Supreme Court recognized that aside from following legal procedure, other implications must be considered. What reminds me of that is a 1981 ruling of the Supreme Court in a case where a number of provinces went before it to object to the patriation of the Constitution. The Supreme Court said, yes, but while what the government is trying to do is perfectly legal, it violates certain rules of behaviour, customs and traditions.

It is all part of the package. Unwritten rules are still rules. Customs are still customs. Traditions are still traditions. Courtesy is essential, as is respect.

In this case, it is the same thing. The privilege that has been violated is to not respect certain senators who, while wanting to participate in the deliberations of the committee, were unable to do so.

In this question of privilege, we are saying that Your Honour does have the authority to recognize the unwritten rules of this place. If we are to restrict ourselves strictly to the written rules, then we will be forced to rewrite all the rules, to cover all the possibilities. I say that because we will have Speakers telling us, "I have to restrict myself to what is written in the little book." All that has been going on in this place, all that has been recognized and accepted as custom in this place will go by the board when we try to base our arguments on them.

In your assessment of whether there is a prima facie case, I ask Your Honour not to restrict yourself to the rule book but to appreciate the customs, traditions and what the Supreme Court called the rules of behaviour that have governed this place for so many years.

Hon. Lorna Milne: Honourable senators, I read very carefully the point of order raised by the Honourable Senator Kinsella the other day. It referred only to our meeting on Thursday. It did not refer at all to the meeting held on Friday, which the opposition knew about on the Tuesday after we had a steering committee meeting on the subject.

Proper 24-hour notice was sent out for the meeting on Friday. The authorities are silent about the ability of a committee to carry on when the Speaker has taken a point of order under consideration. As such, I believe there is no rule of order, tradition or parliamentary privilege to violate here whatsoever. I believe the Rules Committee has done nothing wrong.

Hon. A. Raynell Andreychuk: Honourable senators, I rise to support what Senator Lynch-Staunton has said. In doing so, I will not go through the point that we indicated was troublesome to us. It was not based on rules. It was based on fairness and the ability of the opposition to put forward its point of view.

• (2000)

We could not manage the committees on Thursdays and we raised the point that the witnesses had difficulty with the timetable that the majority was putting forward. Inferentially, if not explicitly, we talked about Thursday and Friday. We talked about the conduct and the attitude toward the minority. The press picked up that the opposition was boycotting the Thursday and Friday meetings, so I want it on the record that, had we been boycotting, we would have come with all our members and with the support of some of the majority members, and easily overruled the majority. Senator Grafstein and Senator Joyal were noted and some senators were uncomfortable with that. We could have stopped the process but, in respect of the majority and the fact that they had called a steering committee, we went to plead on substantial grounds that we could not do it. There was no response from the majority to support us but certain views of members of the majority were expressed. We lost because we did not stack the deck.

We were not playing games. We were putting forward a sincere point of view, and we put forward a point of order in the afternoon which, in essence, was an appeal to this chamber through His Honour. If that appeal were still resting in your hands at the time, then what point would there be to attend the Friday meeting, because the two meetings were intertwined with witnesses and with senators?

I believe the point of privilege is well taken; otherwise we would not be able to rely on customs, conventions and on a sober second thought from this chamber through the Speaker.

Hon. Joan Fraser: Honourable senators, I wish to expand on Senator Milne's comments. During all the debates, which were extensive, on the original point of order, no one mentioned the Friday meeting, although it was well known that the Friday meeting was scheduled. The substance of the debate around the point of order — the question upon which we awaited His Honour's ruling — was the propriety of holding the meeting of the Rules Committee at the same time that other regularly-scheduled committees were meeting. On Friday morning, no other committees were meeting and the Senate was not sitting. There was no conflict. I am sure it would have been inconvenient for members of the opposition to attend just as it was inconvenient for some of us to attend. However, we did attend because it was business of Senate and that took precedence over any other plans that we may have had.

The essential point is the fundamental difference between the question to which we were awaiting an answer from His Honour and the question of whether it was appropriate to have a meeting on Friday.

Senator Lynch-Staunton: It might have been well known to Senator Fraser that there was a meeting on Friday but, as far as we were concerned, it was only known to us at the Thursday

meeting. I looked back on proceedings of other committees when they wanted to meet outside the usual time slots and I have yet to find one that did not consult the entire membership before doing so. In this case, that was not done.

The point of privilege is based on something more important than that. I should like to correct Senator Fraser because she is leaving the impression that the Friday meeting was well known earlier in the week. That may have been the case for her side of the house, but it was not known by our side until it was too late to change our plans.

Hon. Terry Stratton: Honourable senators, the issue is that not all of us are from the Montreal-Toronto-Ottawa triangle. Some of us travel great distances and have established plans for that travel to our home regions, perhaps to attend events that are previously scheduled. What worries me more than anything about this whole involvement of the process is that it demonstrates that you will not have cooperation from this side. That is the message it conveys regarding other issues. Why would we cooperate? For what purpose would we cooperate on other issues if this is an example of cooperation? What would be the point? What are we talking about here? There is, indeed, a privilege and it is called the privilege of respect for one another. If you want respect, you give respect. You do not march past that respect and ignore it.

The report was tabled in this chamber without the Speaker's ruling having been heard. Is that called respect for this chamber? I do not think so at all. That is akin to marching by respect for every individual in this chamber, and if that is not a point of privilege, then I do not know what is.

Hon. Bill Rompkey: Honourable senators, in an effort to assist in the debate, it might be worthwhile to record some precedents that His Honour may wish to reflect on when making his ruling. I would refer to one example of the Rules Committee meeting and reporting back to the chamber with no opposition members present. At that time, the opposition was the Liberals. The Standing Committee on Rules and Orders met on June 4 and 5, 1991 with no Liberal members present to deliberate on amendments to the *Rules of the Senate*. The committee adopted the report on June 5, 1991. This report led to new rules for the Senate.

Senator Balfour stated at the time that the opposition senators chose not to participate in the proceedings. The membership on the Rules Committee on those dates was as follows: eight Conservatives present and no Liberals present. The Conservatives, who were members of that committee and still in the Senate today, are: Senator Di Nino, Senator Robertson, Senator Kinsella and, I understand, Senator Meighen. The meeting of the Rules Committee was at the start of a new session and there were still no Liberals nominated by the Committee of Selection to sit on the Rules Committee. It was an organization meeting and the first proceeding was consideration of amendments to the *Rules of Senate*. The committee continued, although no opposition Liberal members were present.

Senator Corbin's letter asking for an adjournment of the Rules Committee because of the lack of liberal membership was read into the record, but the letter was ignored. Conservatives gave the following reasons for proceeding with the Rules Committee meeting without liberal members. Senator Kinsella said that the Senate had established the committee and had given it a mandate to go about its business. Senator Di Nino supported Senator Kinsella's sentiment.

In the same year, on Bill C-6, second reading was moved by Senator Kelleher on June 20, 1991 and the bill was referred to the Standing Senate Committee on Foreign Affairs. The committee met only twice to review Bill C-6. Members of the committee present were the Honourable Senators Bolduc, Di Nino, Kelleher, Kinsella, Murray, Ottenheimer, Castonguay and Lavoie-Roux. No Liberal senators were present.

It is worth reflecting on that when His Honour is making his judgment in light of precedence and how the Senate has operated within the *Rules of the Senate* in the past.

Senator Lynch-Staunton: I remember the first case well. Senator Olsen came to a meeting and he was yanked away by the leadership and probably sent into exile. The point is that those meetings were held at well-known, regularly scheduled time slots. That is the difference. In this case, two meetings were held outside the usual time slots without any consultation with all the membership. That is the significant difference.

• (2010)

Senator Kinsella: Honourable senators, someone expressed the other day that in debate it is important to defend your position and to disagree. That is justifiable. However, to be disagreeable is never justifiable.

I do want to underscore a very important distinction. If the reason that His Honour the Speaker does not find a *prima facie* case of breach of privilege is that the Speaker — as was indicated in the ruling earlier today, which we accept — does not interfere with the business within a committee, that is one thing. However, as Senator Stratton has just pointed out, the critical privilege that has been breached is that there is a long tradition of deliberations on an item not continuing when the legitimacy of the deliberation is under question, to the extent that it is the subject matter of a ruling that will come down from the Speaker.

As I said in my earlier remarks, it is not only the Speaker but also the force of the house behind the Speaker's ruling. At the end of day, the chamber can make that determination because, unlike the House of Commons, it is not simply the Speaker who rules. In the Senate, the Speaker rules, and it can be confirmed one way or the other by the entire chamber.

The breach of privileges was something that happened in a committee, and the Speaker did not want to deal with that. However, something happened in the chamber today that has breached the privilege. There was an item under "Presentation of

Reports from Standing or Special Committees." It was the tabling of a report from the Standing Senate Committee on Rules, Procedures and the Rights of Parliament. That committee was presenting a report on Bill C-34 without amendments.

Honourable senators, that action took place in this chamber. This chamber had fully comprehended that the Speaker of the house was holding his decision in reserve. With the Speaker's ruling being attended, that action in the house clearly broke with all tradition and customs.

It is self-evident that we do not proceed with an item that is subject to a Speaker's ruling. This incident did not occur in the committee. This incident occurred here in the chamber. It occurred with the Speaker in the Chair.

The impact of all of this on our privilege is that we — or, at least, I was operating on the understanding that it has been the practice of this place that we do not proceed with an item when it is taken under advisement for a ruling by the Speaker. That was the situation Thursday afternoon when His Honour the Speaker took this matter in reserve for decision. Honourable senators, based on my experience of my 13 years here in this chamber, that meant that that entire issue was frozen until we knew whether or not it was legitimate. We found out this afternoon from the ruling that it was not legitimate, but we did not know that earlier.

On Thursday afternoon, I heard about a meeting that was to take place the next morning of a committee of which I am an *ex officio* member. I believed that I could not go to that meeting and that there would not be a meeting because the Speaker had reserved a ruling on it. The point of order is exactly about the legality of that meeting. My privileges, and those of all honourable senators, are such that that meeting could not function because the Speaker had reserved his ruling.

The fruit of that labour comes before us today in the house. The Speaker has a direct say because it is not the situation of something happening in committee, which speakers hesitate to adjudicate. This has occurred right here in the chamber.

There has been an attempt to table a report on a matter that was under reserve for a ruling. Therefore, clearly there is a *prima facie* case. There is a substantive and serious case of privileges that it is to be hoped the committee will examine in detail because this is affecting the nature in which the rules are written. It is affecting our tradition and our customs.

We know where the numbers are, but if this place is to operate, we must operate on rules, traditions and practices.

Hon. Senators: Hear, hear!

The Hon. the Speaker: I indicated that I would hear Senator Kinsella last. I believe that I have heard enough, honourable senators, to have a sense of this matter. It has been well argued. I will take under consideration whether there is a *prima facie* case and report back to the chamber as soon as possible.

THE SENATE

MOTION FOR WEDNESDAY
ADJOURNMENTS ADOPTED

Hon. John Lynch-Staunton (Leader of the Opposition), pursuant to notice of October 30, 2003, moved:

That, for the remainder of the current session, when the Senate sits on a Wednesday it do adjourn no later than 4 p.m.;

That, if the business of the Senate has not been completed at 4 p.m., the Speaker shall interrupt the proceedings and the Senate will remain suspended until 8 p.m.; and

That, should a vote be deferred on a Wednesday until 5:30 p.m. the same day, the Speaker shall interrupt the proceedings at 4 p.m. to suspend the sitting until 5:30 p.m. for the taking of the deferred vote.

He said: Honourable senators, I gave notice of this motion last week. It was agreed to dispose of it with leave that same day, but we did not address it. The point is simply to allow committees to know that on a Wednesday, they can fix the beginning of their hearings at a set hour.

In the part of the motion noting that for the remainder of the current session when the Senate sits on a Wednesday, I have the word "adjourn". It should read, "suspend." I ask leave to change that word.

The motion should thus read:

...it do suspend no later than 4 p.m.;

That, if the business of the Senate has not been completed at 4 p.m., the Speaker shall interrupt the proceedings and the Senate will remain suspended until 8 p.m.;

• (2020)

The committees will know on a Wednesday that if they want to do business and their time slots so allow, that instead of waiting for the Senate to adjourn, they can tell their witnesses and whoever else is interested in the proceedings that at four o'clock at the latest, the committee hearings will begin.

The motion continues:

That, should a vote be deferred on a Wednesday until 5:30 p.m. the same day, the Speaker shall interrupt the proceedings at 4 p.m. to suspend the sitting until 5:30 p.m. for the taking of the deferred vote.

This motion is to allow committees scheduled to sit on Wednesday afternoon assurance that the hour at which they want to schedule their meetings will be respected.

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, we support the motion in amendment asking that the Senate suspend its sitting. Would Senator Lynch-Staunton also agree to add, after the words "8 p.m.", the following: "so as to allow the committees to sit."

One might perhaps wonder if, should the sitting be suspended, the committees are not allowed to sit. This would clarify matters and allow the committees to sit.

[English]

Senator Lynch-Staunton: I do agree.

The Hon. the Speaker: Senator Lynch-Staunton has asked that his motion be amended to substitute the word "adjourn" with the word "suspend" and to add after the words 8:00 p.m. in the second paragraph "so as to allow the committees to sit."

Is it agreed, honourable senators, that changes be made to Senator Lynch-Staunton's motion as he has requested?

Hon. Senators: Agreed.

The Hon. the Speaker: Are we ready for the question?

Senator Lynch-Staunton: I wonder if this question could be taken up by the Rules Committee so that we could come back with a permanent rule for the next session, or after we come back from the Remembrance Day break. I think the Rules Committee should look at this motion.

Hon. Senators: Question!

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion, as modified?

Motion agreed to.

The Senate adjourned until tomorrow at 2 p.m.

APPENDIX

Officers of the Senate

The Ministry

Senators

(Listed according to seniority, alphabetically and by provinces)

Committees of the Senate

THE SPEAKER

The Honourable Daniel P. Hays

THE LEADER OF THE GOVERNMENT

The Honourable Sharon Carstairs, P.C.

THE LEADER OF THE OPPOSITION

The Honourable John Lynch-Staunton

OFFICERS OF THE SENATE**CLERK OF THE SENATE AND CLERK OF THE PARLIAMENTS**

Paul Bélisle

DEPUTY CLERK, PRINCIPAL CLERK, LEGISLATIVE SERVICES

Gary O'Brien

LAW CLERK AND PARLIAMENTARY COUNSEL

Mark Audcent

USHER OF THE BLACK ROD

Terrance J. Christopher

THE MINISTRY

According to Precedence

(November 3, 2003)

The Right Hon. Jean Chrétien	Prime Minister
The Hon. David M. Collenette	Minister of Transport
The Hon. David Anderson	Minister of the Environment
The Hon. Ralph E. Goodale	Minister of Public Works and Government Services
	Minister responsible for the Canadian Wheat Board and Federal Interlocutor for Métis and Non-Status Indians
The Hon. Sheila Copps	Minister of Canadian Heritage
The Hon. John Manley	Deputy Prime Minister, Minister of Finance and Minister of Infrastructure
The Hon. Anne McLellan	Minister of Health
The Hon. Allan Rock	Minister of Industry
The Hon. Lucienne Robillard	President of the Treasury Board
The Hon. Martin Cauchon	Minister of Justice and Attorney General of Canada
The Hon. Jane Stewart	Minister of Human Resources Development
The Hon. Stéphane Dion	President of the Queen's Privy Council for Canada and Minister of Intergovernmental Affairs
The Hon. Pierre Pettigrew	Minister of International Trade
The Hon. Don Boudria	Leader of the Government in the House of Commons
The Hon. Lyle Vanclicf	Minister of Agriculture and Agri-Food
The Hon. Herb Dhaliwal	Minister of Natural Resources
The Hon. Claudette Bradshaw	Minister of Labour
The Hon. Robert Daniel Nault	Minister of Indian Affairs and Northern Development
The Hon. Elinor Caplan	Minister for National Revenue
The Hon. Denis Coderre	Minister of Citizenship and Immigration
The Hon. Sharon Carstairs	Leader of the Government in the Senate
The Hon. Robert G. Thibault	Minister of Fisheries and Oceans
The Hon. Rey Pagtakhan	Minister of Veterans Affairs and Secretary of State (Science, Research and Development)
The Hon. Susan Whelan	Minister for International Cooperation
The Hon. William Graham	Minister of Foreign Affairs
The Hon. Gerry Byrne	Minister of State (Atlantic Canada Opportunities Agency)
The Hon. John McCallum	Minister of National Defence
The Hon. Wayne Easter	Solicitor General of Canada
The Hon. Ethel Blondin-Andrew	Secretary of State (Children and Youth)
The Hon. David Kilgour	Secretary of State (Asia-Pacific)
The Hon. Andrew Mitchell	Secretary of State (Rural Development) (Federal Economic Development Initiative for Northern Ontario)
The Hon. Maurizio Bevilacqua	Secretary of State (International Financial Institutions)
The Hon. Paul DeVilliers	Secretary of State (Amateur Sport) and Deputy Leader of the Government in the House of Commons
The Hon. Gar Knutson	Secretary of State (Central and Eastern Europe and Middle East)
The Hon. Denis Paradis	Secretary of State (Latin America and Africa) (Francophonie)
The Hon. Claude Drouin	Secretary of State (Economic Development Agency of Canada for the Regions of Quebec)
The Hon. Stephen Owen	Secretary of State (Western Economic Diversification) (Indian Affairs and Northern Development)
The Hon. Jean Augustine	Secretary of State (Multiculturalism) (Status of Women)
The Hon. Steve Mahoney	Secretary of State (Selected Crown Corporations)

SENATORS OF CANADA

ACCORDING TO SENIORITY

(November 3, 2003)

Senator	Designation	Post Office Address
THE HONOURABLE		
Herbert O. Sparrow	Saskatchewan	North Battleford, Sask.
Edward M. Lawson	Vancouver	Vancouver, B.C.
Bernard Alasdair Graham, P.C.	The Highlands	Sydney, N.S.
Jack Austin, P.C.	Vancouver South	Vancouver, B.C.
Willie Adams	Nunavut	Rankin Inlet, Nunavut
Lowell Murray, P.C.	Pakenham	Ottawa, Ont.
C. William Doody	Harbour Main-Bell Island	St. John's, Nfld. & Lab.
Peter Alan Stollery	Bloor and Yonge	Toronto, Ont.
Peter Michael Pitfield, P.C.	Ottawa-Vanier	Ottawa, Ont.
E. Leo Kolber	Victoria	Westmount, Que.
Michael Kirby	South Shore	Halifax, N.S.
Jerahmiel S. Grafstein	Metro Toronto	Toronto, Ont.
Anne C. Cools	Toronto-Centre-York	Toronto, Ont.
Charlie Watt	Inkerman	Kuujuuaq, Que.
Daniel Phillip Hays, <i>Speaker</i>	Calgary	Calgary, Alta.
Joyce Fairbairn, P.C.	Lethbridge	Lethbridge, Alta.
Colin Kenny	Rideau	Ottawa, Ont.
Pierre De Bané, P.C.	De la Vallière	Montreal, Que.
Eymard Georges Corbin	Grand-Sault	Grand-Sault, N.B.
Brenda Mary Robertson	Riverview	Shediac, N.B.
Norman K. Atkins	Markham	Toronto, Ont.
Ethel Cochrane	Newfoundland and Labrador	Port-au-Port, Nfld. & Lab.
Eileen Rossiter	Prince Edward Island	Charlottetown, P.E.I.
Mira Spivak	Manitoba	Winnipeg, Man.
Roch Bolduc	Gulf	Sainte-Foy, Que.
Gérald-A. Beaudoin	Rigaud	Hull, Que.
Pat Carney, P.C.	British Columbia	Vancouver, B.C.
Gerald J. Comeau	Nova Scotia	Church Point, N.S.
Consiglio Di Nino	Ontario	Downsview, Ont.
Donald H. Oliver	Nova Scotia	Halifax, N.S.
Noël A. Kinsella	Fredericton-York-Sunbury	Fredericton, N.B.
John Buchanan, P.C.	Nova Scotia	Halifax, N.S.
John Lynch-Staunton	Grandville	Georgeville, Que.
James Francis Kelleher, P.C.	Ontario	Sault Ste. Marie, Ont.
J. Trevor Eyton	Ontario	Caledon, Ont.
Wilbert Joseph Keon	Ottawa	Ottawa, Ont.
Michael Arthur Meighen	St. Marys	Toronto, Ont.
J. Michael Forrestall	Dartmouth and Eastern Shore	Dartmouth, N.S.
Janis G. Johnson	Winnipeg-Interlake	Gimli, Man.
A. Raynell Andreychuk	Regina	Regina, Sask.
Jean-Claude Rivest	Stadacona	Quebec, Que.
Terrance R. Stratton	Red River	St. Norbert, Man.
Marcel Prud'homme, P.C.	La Salle	Montreal, Que.
Leonard J. Gustafson	Saskatchewan	Macoun, Sask.
David Tkachuk	Saskatchewan	Saskatoon, Sask.
W. David Angus	Alma	Montreal, Que.
Pierre Claude Nolin	De Salaberry	Quebec, Que.
Marjory LeBreton	Ontario	Manotick, Ont.

Senator	Designation	Post Office Address
Gerry St. Germain, P.C.	Langley-Pemberton-Whistler	Maple Ridge, B.C.
Lise Bacon	De la Durantaye	Laval, Que.
Sharon Carstairs, P.C.	Manitoba	Victoria Beach, Man.
Landon Pearson	Ontario	Ottawa, Ont.
Jean-Robert Gauthier	Ottawa-Vanier	Ottawa, Ont.
John G. Bryden	New Brunswick	Bayfield, N.B.
Rose-Marie Losier-Cool	Tracadie	Bathurst, N.B.
Céline Hervieux-Payette, P.C.	Bedford	Montreal, Que.
William H. Rompkey, P.C.	Labrador	North West River, Labrador, Nfld. & Lab.
Lorna Milne	Peel County	Brampton, Ont.
Marie-P. Poulin	Nord de l'Ontario/Northern Ontario	Ottawa, Ont.
Shirley Maheu	Rougemont	Saint-Laurent, Que.
Wilfred P. Moore	Stanhope St./Bluenose	Chester, N.S.
Lucie Pépin	Shawinigan	Montreal, Que.
Fernand Robichaud, P.C.	New Brunswick	Saint-Louis-de-Kent, N.B.
Catherine S. Callbeck	Prince Edward Island	Central Bedeque, P.E.I.
Marisa Ferretti Barth	Repentigny	Pierrefonds, Que.
Serge Joyal, P.C.	Kennebec	Montreal, Que.
Thelma J. Chalifoux	Alberta	Morinville, Alta.
Joan Cook	Newfoundland and Labrador	St. John's, Nfld. & Lab.
Ross Fitzpatrick	Okanagan-Similkameen	Kelowna, B.C.
Francis William Mahovlich	Toronto	Toronto, Ont.
Richard H. Kroft	Manitoba	Winnipeg, Man.
Douglas James Roche	Edmonton	Edmonton, Alta.
Joan Thorne Fraser	De Lorimier	Montreal, Que.
Aurélien Gill	Wellington	Mashteuiatsh, Pointe-Bleue, Que.
Vivienne Poy	Toronto	Toronto, Ont.
Ione Christensen	Yukon Territory	Whitehorse, Y.T.
George Furey	Newfoundland and Labrador	St. John's, Nfld. & Lab.
Nick G. Sibbeston	Northwest Territories	Fort Simpson, N.W.T.
Isobel Finnerty	Ontario	Burlington, Ont.
John Wiebe	Saskatchewan	Swift Current, Sask.
Tommy Banks	Alberta	Edmonton, Alta.
Iane Cordy	Nova Scotia	Dartmouth, N.S.
Yves Morin	Lauzon	Quebec, Que.
Elizabeth M. Hubley	Prince Edward Island	Kensington, P.E.I.
Aurier L. LaPierre	Ontario	Ottawa, Ont.
Viola Léger	Acadie/New Brunswick	Moncton, N.B.
Mobina S. B. Jaffer	British Columbia	North Vancouver, B.C.
Sean Lapointe	Saurel	Magog, Que.
Gerard A. Phalen	Nova Scotia	Glace Bay, N.S.
Joseph A. Day	Saint John-Kennebecasis	Hampton, N.B.
Michel Biron	Mille Isles	Nicolet, Que.
George S. Baker, P.C.	Newfoundland and Labrador	Gander, Nfld. & Lab.
Raymond Lavigne	Montarville	Verdun, Que.
David P. Smith, P.C.	Cobourg	Toronto, Ont.
Maria Chaput	Manitoba	Sainte-Anne, Man.
Anna Merchant	Saskatchewan	Regina, Sask.
Therrette Ringuette	New Brunswick	Edmundston, N.B.
Mersey Downe	Charlottetown	Charlottetown, P.E.I.
Paul J. Massicotte	De Lanaudière	Mont-Royal, Que.
Mac Harb	Ontario	Ottawa, Ont.
Adeleine Plamondon	The Laurentides	Shawinigan, Que.
Arllyn Trenholme Counsell	New Brunswick	Sackville, N.B.

SENATORS OF CANADA

ALPHABETICAL LIST

(November 3, 2003)

Senator	Designation	Post Office Address	Political Affiliation
THE HONOURABLE			
Adams, Willie	Nunavut	Rankin Inlet, Nunavut	Lib
Andreychuk, A. Raynell	Regina	Regina, Sask.	PC
Angus, W. David	Alma	Montreal, Que.	PC
Atkins, Norman K.	Markham	Toronto, Ont.	PC
Austin, Jack, P.C.	Vancouver South	Vancouver, B.C.	Lib
Bacon, Lise	De la Durantaye	Laval, Que.	Lib
Baker, George S., P.C.	Newfoundland and Labrador	Gander, Nfld. & Lab.	Lib
Banks, Tommy	Alberta	Edmonton, Alta.	Lib
Beaudoin, Gérard-A.	Rigaud	Hull, Que.	PC
Biron, Michel	Mille Isles	Nicolet, Que.	Lib
Bryden, John G.	New Brunswick	Bayfield, N.B.	Lib
Buchanan, John, P.C.	Halifax	Halifax, N.S.	PC
Callbeck, Catherine S.	Prince Edward Island	Central Bedeque, P.E.I.	Lib
Carney, Pat, P.C.	British Columbia	Vancouver, B.C.	PC
Carstairs, Sharon, P.C.	Manitoba	Victoria Beach, Man.	Lib
Chalifoux, Thelma J.	Alberta	Morinville, Alta.	Lib
Chaput, Maria	Manitoba	Sainte-Anne, Man.	Lib
Christensen, Ione	Yukon Territory	Whitehorse, Y.T.	Lib
Cochrane, Ethel	Newfoundland and Labrador	Port-au-Port, Nfld. & Lab.	PC
Comeau, Gerald J.	Nova Scotia	Church Point, N.S.	PC
Cook, Joan	Newfoundland and Labrador	St. John's, Nfld. & Lab.	Lib
Cools, Anne C.	Toronto-Centre-York	Toronto, Ont.	Lib
Corbin, Eymard Georges	Grand-Sault	Grand-Sault, N.B.	Lib
Cordy, Jane	Nova Scotia	Dartmouth, N.S.	Lib
Day, Joseph A.	Saint John-Kennebecasis	Hampton, N.B.	Lib
De Bané, Pierre, P.C.	De la Vallière	Montreal, Que.	Lib
Di Nino, Consiglio	Ontario	Downsview, Ont.	PC
Doody, C. William	Harbour Main-Bell Island	St. John's, Nfld. & Lab.	PC
Downe, Percy	Charlottetown	Charlottetown, P.E.I.	Lib
Eyton, J. Trevor	Ontario	Caledon, Ont.	PC
Fairbairn, Joyce, P.C.	Lethbridge	Lethbridge, Alta.	Lib
Ferretti Barth, Marisa	Repentigny	Pierrefonds, Que.	Lib
Finnerty, Isobel	Ontario	Burlington, Ont.	Lib
Fitzpatrick, Ross	Okanagan-Similkameen	Kelowna, B.C.	Lib
Forrestall, J. Michael	Dartmouth and the Eastern Shore	Dartmouth, N.S.	PC
Fraser, Joan Thorne	De Lorimier	Montreal, Que.	Lib
Furey, George	Newfoundland and Labrador	St. John's, Nfld. & Lab.	Lib
Gauthier, Jean-Robert	Ottawa-Vanier	Ottawa, Ont.	Lib
Gill, Aurélien	Wellington	Mashteuiatsh, Pointe-Bleue, Que.	Lib
Grafstein, Jerahmiel S.	Metro Toronto	Toronto, Ont.	Lib
Graham, Bernard Alasdair, P.C.	The Highlands	Sydney, N.S.	Lib
Gustafson Leonard J.	Saskatchewan	Macoun, Sask.	PC
Harb, Mac	Ontario	Ottawa, Ont.	Lib
Hays, Daniel Phillip, <i>Speaker</i>	Calgary	Calgary, Alta.	Lib
Hervieux-Payette, Celine, P.C.	Bedford	Montreal, Que.	Lib
Hubley, Elizabeth M.	Prince Edward Island	Kensington, P.E.I.	Lib
Jaffer, Mobina S. B.	British Columbia	North Vancouver, B.C.	Lib

Senator	Designation	Post Office Address	Political Affiliation
Johnson, Janis G.	Winnipeg-Interlake	Gimli, Man.	PC
Joyal, Serge, P.C.	Kennebec	Montreal, Que.	Lib
Kelleher, James Francis, P.C.	Ontario	Sault Ste. Marie, Ont.	PC
Kenny, Colin	Rideau	Ottawa, Ont.	Lib
Keon, Wilbert Joseph	Ottawa	Ottawa, Ont.	PC
Kinsella, Noël A.	Fredericton-York-Sunbury	Fredericton, N.B.	PC
Kirby, Michael	South Shore	Halifax, N.S.	Lib
Kolber, E. Leo	Victoria	Westmount, Que.	Lib
Kroft, Richard H.	Manitoba	Winnipeg, Man.	Lib
LaPierre, Laurier L.	Ontario	Ottawa, Ont.	Lib
Lapointe, Jean	Saurel	Magog, Que.	Lib
Lavigne, Raymond	Montarville	Verdun, Que.	Lib
Lawson, Edward M.	Vancouver	Vancouver, B.C.	Ind
LeBreton, Marjory	Ontario	Manotick, Ont.	PC
Léger, Viola	Acadie/New Brunswick	Moncton, N.B.	Lib
Losier-Cool, Rose-Marie	Tracadie	Bathurst, N.B.	Lib
Lynch-Staunton, John	Grandville	Georgeville, Que.	PC
Maheu, Shirley	Rougemont	Saint-Laurent, Que.	Lib
Mahovlich, Francis William	Toronto	Toronto, Ont.	Lib
Massicotte, Paul J.	De Lanaudière	Mont-Royal, Que.	Lib
Meighen, Michael Arthur	St. Marys	Toronto, Ont.	PC
Merchant, Pana	Saskatchewan	Regina, Sask.	Lib
Milne, Lorna	Peel County	Brampton, Ont.	Lib
Moore, Wilfred P.	Stanhope St./Bluenose	Chester, N.S.	Lib
Morin, Yves	Lauzon	Quebec, Que.	Lib
Murray, Lowell, P.C.	Pakenham	Ottawa, Ont.	PC
Nolin, Pierre Claude	De Salaberry	Quebec, Que.	PC
Oliver, Donald H.	Nova Scotia	Halifax, N.S.	PC
Pearson, Landon	Ontario	Ottawa, Ontario	Lib
Pépin, Lucie	Shawinigan	Montreal, Que.	Lib
Phalen, Gerard A.	Nova Scotia	Glace Bay, N.S.	Lib
Pitfield, Peter Michael, P.C.	Ottawa-Vanier	Ottawa, Ont.	Ind
Plamondon, Madeleine	The Laurentides	Shawinigan, Que.	Ind
Poulin, Marie-P.	Nord de l'Ontario/Northern Ontario	Ottawa, Ont.	Lib
Poy, Vivienne	Toronto	Toronto, Ont.	Lib
Prud'homme, Marcel, P.C.	La Salle	Montreal, Que.	Ind
Ringuette, Pierrette	New Brunswick	Edmundston, N.B.	Lib
Rivest, Jean-Claude	Stadacona	Quebec, Que.	PC
Robertson, Brenda Mary	Riverview	Shediac, N.B.	PC
Robichaud, Fernand, P.C.	New Brunswick	Saint-Louis-de-Kent, N.B.	Lib
Roche, Douglas James	Edmonton	Edmonton, Alta.	Ind
Rompkey, William H., P.C.	Labrador	North West River, Labrador, Nfld. & Lab.	Lib
Rossiter, Eileen	Prince Edward Island	Charlottetown, P.E.I.	PC
St. Germain, Gerry, P.C.	Langley-Pemberton-Whistler	Maple Ridge, B.C.	CA
Stebeston, Nick G.	Northwest Territories	Fort Simpson, N.W.T.	Lib
Smith, David P., P.C.	Cobourg	Toronto, Ont.	Lib
Starrow, Herbert O.	Saskatchewan	North Battleford, Sask.	Lib
Stivak, Mira	Manitoba	Winnipeg, Man.	PC
Stollery, Peter Alan	Bloor and Yonge	Toronto, Ont.	Lib
Stratton, Terrance R.	Red River	St. Norbert, Man.	PC
Stachuk, David	Saskatchewan	Saskatoon, Sask.	PC
Stenholme Counsell, Marilyn	New Brunswick	Sackville, N.B.	Lib
Statt, Charlie	Inkerman	Kuujuuaq, Que.	Lib
Steebe, John.	Saskatchewan	Swift Current, Sask.	Lib

SENATORS OF CANADA
BY PROVINCE AND TERRITORY
 (November 3, 2003)

ONTARIO—24

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Lowell Murray, P.C.	Pakenham	Ottawa
2 Peter Alan Stollery	Bloor and Yonge	Toronto
3 Peter Michael Pitfield, P.C.	Ottawa-Vanier	Ottawa
4 Jerahmiel S. Grafstein	Metro Toronto	Toronto
5 Anne C. Cools	Toronto-Centre-York	Toronto
6 Colin Kenny	Rideau	Ottawa
7 Norman K. Atkins	Markham	Toronto
8 Consiglio Di Nino	Ontario	Downsview
9 James Francis Kelleher, P.C.	Ontario	Sault Ste. Marie
10 John Trevor Eyton	Ontario	Caledon
11 Wilbert Joseph Keon	Ottawa	Ottawa
12 Michael Arthur Meighen	St. Marys	Toronto
13 Marjory LeBreton	Ontario	Manotick
14 Landon Pearson	Ontario	Ottawa
15 Jean-Robert Gauthier	Ottawa-Vanier	Ottawa
16 Lorna Milne	Peel County	Brampton
17 Marie-P. Poulin	Northern Ontario	Ottawa
18 Francis William Mahovlich	Toronto	Toronto
19 Vivienne Poy	Toronto	Toronto
20 Isobel Finnerty	Ontario	Burlington
21 Laurier L. LaPierre	Ontario	Ottawa
22 David P. Smith, P.C.	Cobourg	Toronto
23 Mac Harb	Ontario	Ottawa
24		

SENATORS BY PROVINCE AND TERRITORY

QUEBEC—24

Senator	Designation	Post Office Address
THE HONOURABLE		
1 E. Leo Kolber	Victoria	Westmount
2 Charlie Watt	Inkerman	Kuujuaq
3 Pierre De Bané, P.C.	De la Vallière	Montreal
4 Gérald-A. Beaudoin	Rigaud	Hull
5 John Lynch-Staunton	Grandville	Georgeville
6 Jean-Claude Rivest	Stadacona	Quebec
7 Marcel Prud'homme, P.C.	La Salle	Montreal
8 W. David Angus	Alma	Montreal
9 Pierre Claude Nolin	De Salaberry	Quebec
10 Lise Bacon	De la Durantaye	Laval
11 Céline Hervieux-Payette, P.C.	Bedford	Montreal
12 Shirley Maheu	Rougemont	Ville de Saint-Laurent
13 Lucie Pépin	Shawinigan	Montreal
14 Marisa Ferretti Barth	Repentigny	Pierrefonds
15 Serge Joyal, P.C.	Kennebec	Montreal
16 Joan Thorne Fraser	De Lorimier	Montreal
17 Aurélien Gill	Wellington	Mashteuiatsh, Pointe-Bleue
18 Yves Morin	Lauzon	Quebec
19 Jean Lapointe	Sauvel	Magog
20 Michel Biron	Milles Isles	Nicolet
21 Raymond Lavigne	Montarville	Verdun
22 Paul J. Massicotte	De Lanaudière	Mont-Royal
23 Madeleine Plamondon	The Laurentides	Shawinigan
24		

SENATORS BY PROVINCE-MARITIME DIVISION

NOVA SCOTIA—10

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Bernard Alasdair Graham, P.C.	The Highlands	Sydney
2 Michael Kirby	South Shore	Halifax
3 Gerald J. Comeau	Nova Scotia	Church Point
4 Donald H. Oliver	Nova Scotia	Halifax
5 John Buchanan, P.C.	Halifax	Halifax
6 J. Michael Forrestall	Dartmouth and Eastern Shore	Dartmouth
7 Wilfred P. Moore	Stanhope St./Bluenose	Chester
8 Jane Cordy	Nova Scotia	Dartmouth
9 Gerard A. Phalen	Nova Scotia	Glace Bay
10

NEW BRUNSWICK—10

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Eymard Georges Corbin	Grand-Sault	Grand-Sault
2 Brenda Mary Robertson	Riverview	Shediac
3 Noël A. Kinsella	Fredericton-York-Sunbury	Fredericton
4 John G. Bryden	New Brunswick	Bayfield
5 Rose-Marie Losier-Cool	Tracadie	Bathurst
6 Fernand Robichaud, P.C.	Saint-Louis-de-Kent	Saint-Louis-de-Kent
7 Viola Léger	Acadie/New Brunswick	Moncton
8 Joseph A. Day	Saint John-Kennebecasis	Hampton
9 Pierrette Ringuette	New Brunswick	Edmundston
10 Marilyn Trenholme Counsell	New Brunswick	Sackville

PRINCE EDWARD ISLAND—4

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Eileen Rossiter	Prince Edward Island	Charlottetown
2 Catherine S. Callbeck	Prince Edward Island	Central Bedeque
3 Elizabeth M. Hubley	Prince Edward Island	Kensington
4 Percy Downe	Charlottetown	Charlottetown

SENATORS BY PROVINCE-WESTERN DIVISION

MANITOBA—6

Senator	Designation	Post Office Address
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THE HONOURABLE

1 Mira Spivak	Manitoba	Winnipeg
2 Janis G. Johnson	Winnipeg-Interlake	Gimli
3 Terrance R. Stratton	Red River	St. Norbert
4 Sharon Carstairs, P.C.	Manitoba	Victoria Beach
5 Richard H. Kroft	Manitoba	Winnipeg
6 Maria Chaput	Manitoba	Sainte-Anne

BRITISH COLUMBIA—6

Senator	Designation	Post Office Address
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THE HONOURABLE

1 Edward M. Lawson	Vancouver	Vancouver
2 Jack Austin, P.C.	Vancouver South	Vancouver
3 Pat Carney, P.C.	British Columbia	Vancouver
4 Gerry St. Germain, P.C.	Langley-Pemberton-Whistler	Maple Ridge
5 Ross Fitzpatrick	Okanagan-Similkameen	Kelowna
6 Mobina S.B. Jaffer	British Columbia	North Vancouver

SASKATCHEWAN—6

Senator	Designation	Post Office Address
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THE HONOURABLE

1 Herbert O. Sparrow	Saskatchewan	North Battleford
2 A. Raynell Andreychuk	Regina	Regina
3 Leonard J. Gustafson	Saskatchewan	Macoun
4 David Tkachuk	Saskatchewan	Saskatoon
5 John Wiebe	Saskatchewan	Swift Current
6 Pana Merchant	Saskatchewan	Regina

ALBERTA—6

Senator	Designation	Post Office Address
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THE HONOURABLE

1 Daniel Phillip Hays, <i>Speaker</i>	Calgary	Calgary
2 Joyce Fairbairn, P.C.	Lethbridge	Lethbridge
3 Thelma J. Chalifoux	Alberta	Morinville
4 Douglas James Roche	Edmonton	Edmonton
5 Tommy Banks	Alberta	Edmonton
6		

SENATORS BY PROVINCE AND TERRITORY

NEWFOUNDLAND AND LABRADOR—6

Senator	Designation	Post Office Address
THE HONOURABLE		
1 C. William Doody	Harbour Main-Bell Island	St. John's
2 Ethel Cochrane	Newfoundland and Labrador	Port-au-Port
3 William H. Rompkey, P.C.	Labrador	North West River, Labrador
4 Joan Cook	Newfoundland and Labrador	St. John's
5 George Furey	Newfoundland and Labrador	St. John's
6 George S. Baker, P.C.	Newfoundland and Labrador	Gander

NORTHWEST TERRITORIES—1

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Nick G. Sibbeston	Northwest Territories	Fort Simpson

NUNAVUT—1

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Willie Adams	Nunavut	Rankin Inlet

YUKON TERRITORY—1

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Ione Christensen	Yukon Territory	Whitehorse

ALPHABETICAL LIST OF STANDING, SPECIAL AND JOINT COMMITTEES

(As of November 3, 2003)

*Ex Officio Member

ABORIGINAL PEOPLES

Chair: Honourable Senator Chalifoux

Deputy Chair: Honourable Senator Johnson

Honourable Senators:

Andreychuk	Chalifoux,	Harb,	Massicotte,
Carney,	Chaput,	Léger,	Stratton,
Carstairs,	Christensen,	* Lynch-Staunton,	Tkachuk,
(or Robichaud)	Gill,	(or Kinsella)	Weibe.

Original Members as nominated by the Committee of Selection

Carney, *Carstairs (or Robichaud), Chalifoux, Christensen, Gill, Hubley, Johnson,
Léger, *Lynch-Staunton (or Kinsella), Pearson, Sibbeston, St. Germain, Tkachuk.

AGRICULTURE AND FORESTRY

Chair: Honourable Senator Oliver

Deputy Chair: Honourable Senator Wiebe

Honourable Senators:

Carstairs,	Fairbairn,	LeBreton,	Ringuette,
(or Robichaud)	Gustafson,	* Lynch-Staunton,	Tkachuk,
Chalifoux,	Hubley,	(or Kinsella)	Weibe.
Day,	LaPierre,	Oliver,	

Original Members as nominated by the Committee of Selection

*Carstairs (or Robichaud), Chalifoux, Day, Fairbairn, Gustafson, Hubley, LaPierre, Lapointe,
LeBreton, *Lynch-Staunton (or Kinsella), Moore, Oliver, Tkachuk, Wiebe.

BANKING, TRADE AND COMMERCE

Chair: Honourable Senator Kroft

Deputy Chair: Honourable Senator Tkachuk

Honourable Senators:

Angus,	Chaput,	* Lynch-Staunton,	Meighen,
Kolber,	Kelleher,	(or Kinsella)	Moore,
Carstairs,	Kolber,	Mahovlich,	Prud'homme,
(or Robichaud)	Kroft,	Massicotte,	Tkachuk.

Original Members as nominated by the Committee of Selection

Angus, *Carstairs (or Robichaud), Fitzpatrick, Hervieux-Payette, Kelleher, Kolber, Kroft,
*Lynch-Staunton (or Kinsella), Meighen, Poulin, Prud'homme, Setlakwe, Taylor, Tkachuk.

ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

Chair: Honourable Senator Banks

Deputy Chair: Honourable Senator Spivak

Honourable Senators:

Baker,	Christensen,	Kenny,	Milne,
Banks,	Cochrane,	* Lynch-Staunton,	Spivak,
Buchanan,	Eyton,	(or Kinsella)	Watt.
* Carstairs,	Finnerty,	Merchant,	
(or Robichaud)			

Original Members as nominated by the Committee of Selection

*Baker, Banks, Buchanan, *Carstairs (or Robichaud), Christensen, Cochrane, Eyton, Finnerty, Kenny, *Lynch-Staunton (or Kinsella), Milne, Spivak, Taylor, Watt.*

FISHERIES AND OCEANS

Chair: Honourable: Senator Comeau

Deputy Chair: Honourable Senator Cook

Honourable Senators:

Adams,	Cochrane,	Johnson,	Meighen,
Baker,	Comeau,	* Lynch-Staunton,	Phalen,
* Carstairs,	Cook,	(or Kinsella)	Trenholme-Counsell,
(or Robichaud)	Hubley,	Mahovlich,	Watt.

Original Members as nominated by the Committee of Selection

*Adams, Baker, *Carstairs (or Robichaud), Cochrane, Comeau, Cook, Hubley, Johnson, *Lynch-Staunton (or Kinsella), Mahovlich, Moore, Phalen, Robertson, Watt*

FOREIGN AFFAIRS

Chair: Honourable Senator Stollery

Deputy Chair: Honourable Senator Di Nino

Honourable Senators:

Andreychuk,	Corbin,	Grafstein,	* Lynch-Staunton,
Austin,	De Bané,	Graham,	(or Kinsella)
Carney,	Di Nino,	Losier-Cool,	Mahovlich,
* Carstairs,	Eyton		Stollery.
(or Robichaud)			

Original Members as nominated by the Committee of Selection

*Andreychuk, Austin, Bolduc, Carney, *Carstairs (or Robichaud), Corbin, De Bané, Di Nino, Grafstein, Graham, Losier-Cool, *Lynch-Staunton (or Kinsella), Setlakwe, Stollery.*

HUMAN RIGHTS

Chair: Honourable Senator Maheu

Deputy Chair: Honourable Senator Rossiter

Honourable Senators:

Beaudoin,	Ferretti Barth,	LaPierre,	Maheu,
Carstairs,	Jaffer,	* Lynch-Staunton,	Rivest,
(or Robichaud)	Joyal,	(or Kinsella)	Rossiter.
Chalifoux,			

Original Members as nominated by the Committee of Selection

*Beaudoin, *Carstairs (or Robichaud), Ferretti Barth, Fraser, Jaffer, LaPierre,
Lynch-Staunton (or Kinsella), Maheu, Poy, Rivest, Rossiter.

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

Chair: Honourable Senator Bacon

Interim Deputy Chair: Honourable Senator Robertson

Honourable Senators:

Atkins,	* Carstairs,	Gill,	Ringuette,
Austin,	(or Robichaud)	Jaffer,	Robertson,
Bacon,	De Bané,	* Lynch-Staunton,	Robichaud,
Bolduc,	Eyton,	(or Kinsella)	Stratton.
Bryden,	Gauthier,	Poulin,	

Original Members as nominated by the Committee of Selection

*Angus, Atkins, Austin, *Carstairs (or Robichaud), Bacon, Bryden, De Bané, Doody, Eyton, Gauthier,
Gill, Jaffer, Kroft, *Lynch-Staunton (or Kinsella), Poulin, Robichaud, Stratton.*

LEGAL AND CONSTITUTIONAL AFFAIRS

Chair: Honourable Senator Furey

Deputy Chair: Honourable Senator Beaudoin

Honourable Senators:

Andreychuk,	* Carstairs,	Furey,	* Lynch-Staunton,
Baker,	(or Robichaud)	Joyal,	(or Kinsella)
Beaudoin,	Cools,	Kenny,	Nolin,
Bryden,	Downe,		Pearson.
Buchanan,			

Original Members as nominated by the Committee of Selection

*Andreychuk, Baker, Beaudoin, Bryden, Buchanan, *Carstairs (or Robichaud), Cools, Furey,
Jaffer, Joyal, *Lynch-Staunton (or Kinsella), Nolin, Pearson, Smith.*

LIBRARY OF PARLIAMENT (Joint)

Joint Chair:

Vice-Chair:

Honourable Senators:

Bolduc,	Lapointe,	Morin,	Poy.
Forrestall,			

*Original Members agreed to by Motion of the Senate**Bolduc, Forrestall, Lapointe, Morin, Poy.*

NATIONAL FINANCE

Chair: Honourable Senator Murray

Deputy Chair: Honourable Senator Day

Honourable Senators:

Biron,	Day,	Furey,	Mahovlich,
* Carstairs,	Doody,	Gauthier,	Murray,
(or Robichaud)	Ferretti Barth,	* Lynch-Staunton,	Oliver,
Comeau,	Finnerty,	(or Kinsella)	Ringuette.

*Original Members as nominated by the Committee of Selection**Biron, Bolduc, *Carstairs (or Robichaud), Cools, Day, Doody, Eyton, Ferretti Barth, Finnerty, Furey, Gauthier, *Lynch-Staunton (or Kinsella), Mahovlich, Murray.*

NATIONAL SECURITY AND DEFENCE

Chair: Honourable Senator Kenny

Deputy Chair: Honourable Senator Forrestall

Honourable Senators:

Atkins,	Cordy,	Kenny,	Meighen,
Banks,	Day,	* Lynch-Staunton,	Smith,
* Carstairs,	Forrestall,	(or Kinsella)	Wiebe.
(or Robichaud)			

*Original Members as nominated by the Committee of Selection**Atkins, Banks, *Carstairs (or Robichaud), Cordy, Day, Forrestall, Kenny, *Lynch-Staunton (or Kinsella), Meighen, Smith, Wiebe.*

VETERANS AFFAIRS

(Subcommittee of National Security and Defence)

Chair: Honourable Senator Meighen

Deputy Chair: Honourable Senator Day

Honourable Senators:

Atkins,
Carstairs,
(or Robichaud)Day,
Kenny,* Lynch-Staunton,
(or Kinsella)Meighen,
Wiebe.

OFFICIAL LANGUAGES

Chair: Honourable Senator Losier-Cool

Deputy Chair: Honourable Senator Keon

Honourable Senators:

Beaudoin,
Carstairs,
(or Robichaud)
Chaput,Comeau,
Gauthier,
Keon,Lapointe,
Léger,
Losier-Cool,* Lynch-Staunton,
(or Kinsella)
Maheu.*Original Members agreed to by Motion of the Senate**Beaudoin, *Carstairs (or Robichaud), Comeau, Ferretti Barth, Gauthier, Keon, Lapointe,
Léger, Losier-Cool, *Lynch-Staunton (or Kinsella), Maheu.*

RULES, PROCEDURES AND THE RIGHTS OF PARLIAMENT

Chair: Honourable Senator Milne

Deputy Chair: Honourable Senator Andreychuk

Honourable Senators:

Andreychuk,
Carstairs,
(or Robichaud)
Cordy,
Di Nino,Downe,
Fraser,
Grafstein,
Hubley,
Joyal,* Lynch-Staunton,
(or Kinsella)
Milne,
Murray,
Ringuette,Rompkey,
Robichaud,
Smith,
Stratton.*Original Members as nominated by the Committee of Selection**Andreychuk, Bacon, *Carstairs (or Robichaud), Di Nino, Grafstein, Joyal, Losier-Cool,
*Lynch-Staunton (or Kinsella), Milne, Murray, Pépin, Pitfield, Robertson,
Rompkey, Smith, Stratton, Wiebe.*

SCRUTINY OF REGULATIONS (Joint)

Joint Chair: Honourable Hervieux-Payette

Vice-Chair:

Honourable Senators:

Biron,	Hervieux-Payette,	Moore,	Nolin.
Harb,	Kelleher,		

Original Members as agreed to by Motion of the Senate

Biron, Hervieux-Payette, Hubley, Kelleher, Moore, Nolin, Phalen.

SELECTION

Chair: Honourable Senator Rompkey

Deputy Chair: Honourable Senator Stratton

Honourable Senators:

Biron,	De Bané,	Kolber,	Rompkey,
* Carstairs,	Fairbairn,	LeBreton,	Stratton,
(or Robichaud)	Kinsella,	* Lynch-Staunton,	Tkachuk.
		(or Kinsella)	

Original Members agreed to by Motion of the Senate

*Bacon, *Carstairs, (or Robichaud), De Bané, Fairbairn, Kinsella, Kolber, LeBreton, *Lynch-Staunton, (or Kinsella), Rompkey, Stratton, Tkachuk.*

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

Chair: Honourable Senator Kirby

Deputy Chair: Honourable Senator LeBreton

Honourable Senators:

Callbeck,	Fairbairn,	Léger,	Robertson,
* Carstairs,	Keon,	* Lynch-Staunton,	Roche,
(or Robichaud)	Kirby,	(or Kinsella)	Rossiter,
Cordy,	LeBreton,	Morin,	Trenholme-Counsell.

Original Members as nominated by the Committee of Selection

*Callbeck *Carstairs (or Robichaud), Cook, Cordy, Di Nino Fairbairn, Keon, Kirby, LeBreton, *Lynch-Staunton (or Kinsella), Morin, Pépin, Robertson, Roche.*

TRANSPORT AND COMMUNICATIONS

Chair: Honourable Senator Fraser

Deputy Chair: Honourable Senator Gustafson

Honourable Senators:

Adams,	Day,	Gustafson,	Merchant,
Carstairs,	Eyton,	Johnson,	Phalen,
(or Robichaud)	Fraser,	LaPierre,	Spivak.
Corbin,	Graham,	* Lynch-Staunton,	
		(or Kinsella)	

*Original Members as nominated by the Committee of Selection**Adams, Biron, Callbeck, *Carstairs (or Robichaud), Day, Eyton, Fraser, Graham, Gustafson, Johnson, LaPierre,*Lynch-Staunton (or Kinsella), Phalen, Spivak.*

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CANADA

Debates of the Senate

2nd SESSION

• 37th PARLIAMENT

• VOLUME 140

• NUMBER 94

OFFICIAL REPORT
(HANSARD)

Tuesday, November 4, 2003

—

THE HONOURABLE DAN HAYS
SPEAKER

A red circular stamp is located in the bottom right corner of the page. It contains the text "LIBRARY OF PARLIAMENT" around the perimeter and "OTTAWA" in the center.

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(Daily index of proceedings appears at back of this issue).

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THE SENATE

Tuesday, November 4, 2003

The Senate met at 2 p.m., the Speaker in the Chair.

Prayers.

SENATORS' STATEMENTS

VETERANS' WEEK 2003

Hon. J. Michael Forrestall: Honourable senators, I rise to draw your attention to a ceremony that took place in this chamber this morning, in collaboration with the Department of Veterans Affairs, marking the beginning of Veterans' Week in Canada. The theme this year is "Canada Remembers the Korean War." Most of us may know it as the forgotten war.

I wish to draw the attention of honourable senators to the absolute splendour and dignity that accompanied not only the ceremony this morning — this was the sixth — but also the previous five. The ceremony is an undertaking on the part of the Senate that serves us all well.

Honourable senators, I would like to bring to your attention a tragic railway accident that happened at Canoe River on November 21, some 53 years ago, when 17 lives were lost en route to that conflict across the Pacific. I will list their names so that we might all remember them.

Gunner Arden Joseph Atchison, Loon Lake, Saskatchewan

Gunner Weldon Eugene Barkhouse, Wolfville, Nova Scotia

Gunner Norman William Carroll, Pennant, Saskatchewan

Gunner Frederick William Conway, Grand Falls, Newfoundland and Labrador

Gunner Robert Arthur Craig, Foam Lake, Saskatchewan

Gunner Austin Emery George, Canso, Nova Scotia

Gunner Urbain Joseph Lévesque, Ottawa, Ontario

Gunner Robert William Manley, Niagara Falls, Ontario

Gunner Basil Patrick McKeown, Moscow, Ontario

Gunner Albert Patrick Orr, Calgary, Alberta

Gunner David Owens, Granby, Quebec

Gunner Leslie Albert Snow, St. John's, Newfoundland and Labrador

Gunner Albert George Stroud, Howley, Newfoundland and Labrador

Gunner Joseph Thistle, Conception Bay, Newfoundland and Labrador

Bombardier James Milo Wenkert, Cowansville, Quebec

Gunner James Joseph White, Placentia Bay, Newfoundland and Labrador

Gunner William David Wright, Neepawa, Manitoba

May their souls rest in peace.

REMEMBRANCE DAY 2003

Hon. Gerry St. Germain: Honourable senators, the Right Honourable John Diefenbaker once stated:

I am a Canadian, free to speak without fear, free to worship in my own way, free to stand for what I think right, free to oppose what I believe wrong, or free to choose those who shall govern my country. This heritage of freedom I pledge to uphold for myself and all mankind.

He was speaking on the Canadian Bill of Rights on July 1, 1960.

Today, in remembrance of the Korean War, and then again next week on Remembrance Day, we honour Canadian veterans for upholding these values and freedoms. Through their commitment and service to this country, veterans demonstrated to all Canadians that freedom must be protected.

On Remembrance Day, I will join with all Canadians to recognize and thank our veterans for the immense sacrifices they and their families have made in service to this great country. Our collective conscience as a nation is coloured by the courageous action of our soldiers.

All generations of Canadians know all too well the loss experienced by a nation at the death of a soldier. The reality is that freedom entails great responsibility and great sacrifice.

• (1410)

Recognizing this truth, we honour all veterans who serve this nation with distinction, remembering that in World War I, World War II, the Korean War and the Gulf War, 1,500,000 Canadians served overseas and more than 100,000 died, giving their lives so that we may live in peace.

Today we pay special tribute to the veterans of the Korean War, celebrating the 50th anniversary of the Korean War Armistice. On this Remembrance Day we must affirm our collective responsibility to support the members of our military currently working for peace in the former Yugoslavia and in Afghanistan. We are reminded of the courage of our Canadian soldiers who recently lost their lives while serving abroad. To them, we pay the utmost respect, admiration and gratitude.

Above all, we must teach young generations of Canadians that historically this country did not shy away from contributing to the protection of democracy and freedom in the world. Rather, over two world wars, the Korean War and innumerable peacekeeping missions, Canada developed and sent into battle one of the most highly professional, trained and motivated forces in the world. This tradition of excellence must not be abandoned.

Our duty, honourable senators, is to honour our veterans by continuing to support the men and women who now serve and by protecting the legacy of those brave soldiers who paid the ultimate price so that we could live in peace. To serve in armed combat for the sake of freedom and democracy is among the most noble of sacrifices that our fellow Canadians can make.

VISITORS IN THE GALLERY

The Hon. the Speaker: I wish to draw the attention of honourable senators to the presence in the gallery of the Honourable Zharmakhan Tuyakbai, Chairman of the Mazhilis of the Parliament of the Republic of Kazakhstan. Mr. Tuyakbai is accompanied by Mr. Valeryan Zemlyanov, Member of the Committee on Legislation and Legal Reform; Mr. Serik Konakbaev, Member of the Committee on International Affairs, Defence and Security; Mr. Rakhmet Mukashev, Member of the Committee on Legislation and Legal Reform; Mr. Amalbek Tshanov, Member of the Committee on International Affairs, Defence and Security; from the Embassy of the Republic of Kazakhstan, His Excellency Kanat Saudabayev, Ambassador to Canada, who is accredited from Washington; and from the Kazakhstan Consulate in Toronto, our former colleague in the other place, the Honourable Robert Kaplan, Honorary Consul General.

Welcome to the Senate of Canada.

[Translation]

ROUTINE PROCEEDINGS

OFFICIAL LANGUAGES ACT

BILL TO AMEND—REPORT OF COMMITTEE

Hon. Rose-Marie Losier-Cool, the Chair of the Standing Senate Committee on Official Languages, presented the following report:

Tuesday, November 4, 2003

The Standing Senate Committee on Official Languages has the honour to present its

FIFTH REPORT

Your Committee, to which was referred Bill S-11, *An Act to amend the Official Languages Act (promotion of English and French)*, has, in obedience to the Order of Reference of Wednesday, May 7, 2003, examined the said bill and now reports the same without amendment.

Respectfully submitted,

ROSE-MARIE LOSIER-COOL
Chair

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator Losier-Cool, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

[English]

HUMAN RIGHTS

FACT-FINDING TRIP—OCTOBER 10-17, 2003— REPORT TABLED

Hon. Shirley Maheu: Honourable senators, I have the honour to table the seventh report of the Standing Senate Committee on Human Rights entitled: "Report of the Delegation of the Standing Senate Committee on Human Rights on its Fact-Finding Mission to Geneva, Switzerland and Strasbourg, France, October 10 to 17, 2003."

On motion of Senator Maheu, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

STUDY ON LEGAL ISSUES AFFECTING ON-RESERVE MATRIMONIAL REAL PROPERTY ON BREAKDOWN OF MARRIAGE OR COMMON LAW RELATIONSHIP

INTERIM REPORT OF HUMAN RIGHTS COMMITTEE TABLED

Hon. Shirley Maheu: Honourable senators, I have the honour to table the eighth report of the Standing Senate Committee on Human Rights entitled: "A Hard Bed to Lie in: Matrimonial Real Property on Reserve."

On motion of Senator Maheu, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

STUDY ON THE ADMINISTRATION AND OPERATION OF THE BANKRUPTCY AND INSOLVENCY ACT AND THE COMPANIES' CREDITORS ARRANGEMENT ACT

REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE TABLED

Hon. Richard H. Kroft: Honourable senators, I have the honour to table the 15th report of the Standing Senate Committee on Banking, Trade and Commerce concerning its examination on the administration and operation of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act entitled: "Debtors and Creditors Sharing the Burden: A Review of the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act."

On motion of Senator Kroft, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[Translation]

STUDY ON VETERANS' SERVICES AND BENEFITS, COMMEMORATIVE ACTIVITIES AND CHARTER

INTERIM REPORT OF NATIONAL SECURITY AND DEFENCE COMMITTEE TABLED

Hon. Michael A. Meighen: Honourable senators, I have the honour to table the eighteenth report of the Standing Senate Committee on National Security and Defence on the study of the services and benefits provided to veterans, commemorative activities, and the Veterans Charter.

On motion of Senator Meighen, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[English]

• (1420)

FOREIGN AFFAIRS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF TRADE RELATIONSHIPS WITH UNITED STATES AND MEXICO

Hon. Peter A. Stollery: Honourable senators, I give notice that, at the next sitting of the Senate, I shall move:

That, notwithstanding the Order of the Senate adopted November 21, 2002, the date for the final report of the Standing Senate Committee on Foreign Affairs regarding its study of the Canada-United States of America trade relationship and the Canada-Mexico trade relationship be extended from December 19, 2003 to March 31, 2004.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO DEPOSIT REPORT WITH CLERK OF THE SENATE

Hon. Peter A. Stollery: Honourable senators, I give notice that, at the next sitting of the Senate, I shall move:

That the Standing Senate Committee on Foreign Affairs be permitted, notwithstanding usual practices, to deposit its reports with the Clerk of the Senate, if the Senate is then not sitting; and that the reports be deemed to have been tabled in the Senate.

NATIONAL SECURITY AND DEFENCE

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING ADJOURNMENT OF THE SENATE

Hon. Colin Kenny: Honourable senators, I give notice that on Wednesday next, November 5, 2003, I will move:

That the Standing Senate Committee on National Security and Defence be empowered, in accordance with rule 95(3)(a) to sit on November 17, 2003 and November 24, 2003, even though the Senate may then be adjourned for a period exceeding one week.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE

Hon. Colin Kenny: Honourable senators, I give notice that on Wednesday next, November 5, 2003, I will move:

That the Standing Senate Committee on National Security and Defence have power to sit at any time on Monday, November 17, 2003 and Monday, November 24, 2003, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO DEPOSIT INTERIM REPORT WITH CLERK OF THE SENATE

Hon. Colin Kenny: Honourable senators, I give notice that on Wednesday next, November 5, 2003, I will move:

That the Standing Senate Committee on National Security and Defence be permitted, in the event of an adjournment and notwithstanding the usual practices, to deposit with the Clerk of the Senate an interim report or first responders, and that the report be deemed to have been tabled in the Chamber.

AGRICULTURE AND FORESTRY

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Donald H. Oliver: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(a), I move:

That the Standing Senate Committee on Agriculture and Forestry have power to sit at 5:30 p.m. today, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I do not think that is necessary because we passed a motion that we would rise.

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, that motion relates to Wednesdays.

Senator Carstairs: It is for today that the honourable senator is requesting leave.

Senator Oliver: That is correct.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Marcel Prud'homme: Objection.

The Hon. the Speaker: Is that a "no", Senator Prud'homme?

Senator Prud'homme: No, just the usual objection.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Senator Prud'homme: On division.

Motion agreed to, on division.

[Translation]

OFFICIAL LANGUAGES

BILINGUAL STATUS OF CITY OF OTTAWA— PRESENTATION OF PETITION

Hon. Jean-Robert Gauthier: Honourable senators, pursuant to rule 4(h), I have the honour to present the petitions signed by 500 other individuals, for a total of 15,500 signatures, asking that the City of Ottawa, the capital of Canada, be declared officially bilingual and the reflection of the country's linguistic duality.

The petitioners are calling on the Parliament of Canada to consider the following:

That the Canadian Constitution provides that English and French are the two official languages of our country and have equality of status and equal rights and privileges as to their use in all institutions of the Government of Canada;

That section 16 of the *Constitution Act, 1867*, designates the city of Ottawa as the seat of the Government of Canada; and;

[English]

That citizens have the right in the national capital to have access to the services provided by all institutions of the Government of Canada in the official language of their choice, namely English or French;

That Ottawa, the capital of Canada, has a duty to reflect the linguistic duality at the heart of our collective identity and characteristic of the very nature of our country.

Therefore, your petitioners ask Parliament to confirm in the Constitution of Canada that Ottawa, the capital of Canada, is officially bilingual, pursuant to section 16 of the *Constitution Act*, from 1867 to 1982.

QUESTION PERIOD

NATIONAL DEFENCE

REPLACEMENT OF SEA KING HELICOPTERS— STATUS OF PROCUREMENT PROJECT

Hon. J. Michael Forrestall: Honourable senators, my question is for the Leader of the Government in the Senate. This is another auspicious date. Ten years ago today, a man who is about to retire and is in the midst of celebrating his tenth anniversary cancelled, with a flourish, the contract for the Sea King helicopters.

Some Hon. Senators: Shame!

Senator Forrestall: With the air force investigation into the cause of the two Sea King loss-of-power malfunctions while hovering still ongoing and the entire fleet still under flight restriction, can the Leader of the Government give us some direct information as to the status of the maritime helicopter replacement project? Where does it stand? It is two or three months overdue again. When will requests be called?

Hon. Sharon Carstairs (Leader of the Government): As the honourable senator knows and certainly alluded to in the preamble to his question, there was a suspension of operation of the Sea Kings due to problems with two of them. The entire fleet did undergo a suspension of normal flying, but that suspension has now been lifted. The Sea Kings are now back in operation.

It was a prudent precaution. Although the honourable senator does not always concur, the Canadian government, in particular those in charge of our military operations, does not allow the operation of any piece of military equipment that is considered to be unsafe.

As to the ongoing procurement process, as I indicated to the honourable senator some months ago, a decision is expected early in 2004.

Senator Forrestall: There is a temptation to give another explanation as to just what "immediately" means, what "soon" means and what "high priority" means. However, it merely means the passage of time.

As the Leader of the Government may know, the pre-qualification phase of the Maritime Helicopter Project was at an end on October 30, 2003. Will the Leader of the Government tell honourable senators something a little more specific than "some time next year?" Will the Leader of the Government tell us when the request for proposals will be released to industry, keeping in mind that the request for proposals was expected in September?

It is now November 4, 2003, 10 years after the date of cancellation.

• (1430)

Senator Carstairs: Honourable senators, I will try to obtain the date of when they expect to release the request to the industry and provide that information to the honourable senator.

Senator Forrestall: Given the constant delays of this Maritime Helicopter Project, given the fact that the Department of Defence is faced with cuts, and given that a new Prime Minister and new cabinet have no commitment to the Sea King replacement at all, indeed nor to any other much needed equipment by the Canadian Armed Forces, can the Leader of the Government give us a categorical commitment that the military will receive at least one replacement helicopter for the obsolete Sea King before the end of this decade — by then some 17 years after the current Prime Minister cancelled the EH-101 program?

Senator Carstairs: As the honourable senator knows, until such time as the final bids have been submitted and the final choice of an aircraft has been made, the actual date of when the first one would be delivered will not be available.

HEALTH

FINANCIAL UPDATE— ADDITIONAL FUNDS TO PROVINCES

Hon. Gerald J. Comeau: Honourable senators, yesterday in his economic update, the Minister of Finance warned the provinces that they may not get the supplementary \$2 billion payment for health care announced in the last budget. They will only get the full amount if there is \$2 billion left at the end of the year, and if there is a lesser amount, they will get the lesser amount.

Can the Leader of the Government assure the Senate that the government will not try to dispose of any of the surplus at the end of the current fiscal year through the purchase of executive jets or by dumping money into foundations in order that the \$2 billion earmarked for health care stays in the surplus and does finally wind up in health care, which is the number one priority of Canadians?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, it is an amazing day when a very positive announcement made by the Department of Finance is twisted by the honourable senator opposite. The original agreement with the provinces was that they would only get this money if there were a \$3 billion

surplus. The decision has now been made that a lesser surplus would be required in order for them to get this money. Indeed, if the surplus were less than \$2 billion, they would get up to whatever the surplus was, which is a much greater commitment than was made at the time of the signing of the accord.

Senator Comeau: Honourable senators, "twisting" is a word that is very well known to the other side. This side tries to stay with the proper wording.

In reading the wording of the Finance Minister, he is basically saying that if the amount is not there, they will not get it. The provinces are endeavouring to provide services to their people based on the commitment that the \$2 billion would be there. It looks as if it may not be paid at all now. We will not really find out until August when the books are closed, and possibly even after that, if any money is to be forthcoming.

Can the government leader in the Senate assure the Senate that the new, incoming Prime Minister will not review this \$2 billion, as he planned to do with the \$700 million promise to VIA Rail, and that this will not become one of the other items on the review by the incoming Prime Minister?

Senator Carstairs: Honourable senators, I would be very surprised if a new Prime Minister would not review all programs and initiatives of the government. I would think that to do so would be extraordinarily prudent on his part.

Senator Comeau: Honourable senators, is the Leader of the Government in the Senate saying that the \$2 billion commitment of the current government is up for review by the incoming Prime Minister?

Senator Carstairs: I did not say that, senator. I said that the new Prime Minister would review all the initiatives of the government, because to do otherwise would be less than of service to the Canadian people.

Hon. Donald H. Oliver: Honourable senators, my question is a follow-up to the line of questions just posed by Honourable Senator Comeau. It arises from the fact that the provinces may or may not get that \$2 billion.

Another set of numbers in the economic statement is equally disturbing. In last year's economic update and in the budget, the government said that it would spend \$13.4 billion on fiscal arrangements this year. This is mostly equalization payments but also includes transfers to the territories and a few other, minor transfer payments. We have now learned that the government expects to send the provinces only \$11 billion, or \$2.4 billion less. Will the government leader confirm that the real question facing the provinces is whether they will end up with \$2.4 billion less than they were told to expect in February, or adding in that doubtful \$2 billion, they will find themselves \$4.4 billion short?

Senator Carstairs: The honourable senators know that the fiscal arrangements that are entered into with provinces are ones which both parties agree to, and there is no change, or attempt to do it any other way.

FINANCE

FINANCIAL UPDATE—EQUALIZATION PAYMENTS

Hon. Donald H. Oliver: Honourable senators, in each and every year going out to 2007-08, the government expects that transfers for fiscal arrangements will be \$2 billion to \$2.4 billion less than expected at the time of the last economic update. It all adds up to more than \$11 billion over five years being taken away from the provinces that can least afford it. At the same time, the equalization-receiving provinces are being asked to repay more than \$1 billion from last year. Why is it that whenever this government faces a fiscal shortfall, it tries to offload the problem on the provinces?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, there is no offloading here at all. As the senator knows, equalization payments are based on a formula, and that formula is being respected.

INTERNATIONAL TRADE

PHARMACEUTICAL SALES
TO PEOPLE IN UNITED STATES

Hon. Brenda M. Robertson: Honourable senators, last Wednesday the Mayor of New York City, Mr. Michael Bloomberg, called upon American pharmaceutical companies to stop supplying drugs to Canada. Mr. Bloomberg contends that American consumers are forced to pay more because the pharmaceutical companies need to recover lost profits due to our price controls. Although the government leader in the Senate told us last week that Canada does not impose price controls on pharmaceutical products but, rather, regulates the prices, obviously many Americans do not make that distinction, and they may put pressure on the drug companies to cut our supply.

My question is for the Leader of the Government in the Senate. What is the federal government's response to Mr. Bloomberg's appeal to U.S. pharmaceutical companies, and does it have any concern that they will listen to his requests?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I must say it is hard enough in my job to answer for all of the ministers in the Government of Canada. I will not attempt to answer for the Mayor of New York.

Senator Robertson: Honourable senators, I guess the honourable minister misunderstood my question, because my question was what the federal government's response was to Mr. Bloomberg's appeal to the U.S. pharmaceutical companies, and that is completely different from her interpretation.

HEALTH

PHARMACEUTICAL SALES TO PEOPLE
IN UNITED STATES—POSSIBILITY OF SHORTAGES

Hon. Brenda M. Robertson: I also have a supplementary question: Health Canada sent a letter last Monday to pharmacy

and medical associations across the country, warning that risks inherent in the Internet pharmacy practice may lead to drug shortages in Canada. The letter asks that any trends spotted concerning drug supplies, safety concerns or impacts on health human resources be communicated to the department.

I should like to ask the Leader of the Government in the Senate to tell us if pharmacies are already letting Health Canada know about shortages they are facing that they can somehow trace to the sale of Canadian prescription drugs to American consumers.

Hon Sharon Carstairs (Leader of the Government): Honourable senators, as the honourable senator knows, the letter was dated October 27, 2003, which was just last week. To my knowledge, no responses have been received, but I think it was highly prudent on the part of Health Canada to ask pharmacies throughout the country, as well as medical associations and regulatory authorities, to inform the government if there were a potential for any drug shortages in Canada.

INTERNATIONAL TRADE

PHARMACEUTICAL SALES
TO PEOPLE IN UNITED STATES

Hon. Consiglio Di Nino: Honourable senators, some of us have been around long enough to remember when the previous government fought very hard for legislation to create a pharmaceutical industry in this country based on brand-name manufacturing.

• (1440)

The government included in that legislation certain safeguards to ensure that Canadian interests were respected. At the time the honourable senator's colleagues were very critical of that system, but they have since come on board and have agreed that this is a very good system.

Would it not be appropriate to tell the Americans that, unlike some other things that we may not do quite as well, this is one thing that we have done right? This is one thing that has worked. This is one thing that we, as a country, have been able to accomplish to the benefit of both the pharmaceutical companies and the consumers; it is a win-win situation. If they do not know how to do that, they can come up here and we can teach them how to do it.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I would assume that the American government is well aware of the Canadian regulatory system with respect to prescription drugs. I think they could learn a great deal about the way in which we manage our health care system, but they have not, up to this time, chosen to do so.

FOREIGN AFFAIRS

UNITED STATES—CANADIAN CITIZEN DEPORTED
TO SYRIA—REQUEST FOR INQUIRY

Hon. Marcel Prud'homme: Honourable senators, people did not pay much attention on Tuesday, October 22, 2002, when I was the first one in either house to raise the very scandalous events that took place concerning Mr. Arar. I know the region he comes from particularly well. My father always told me that if you want to talk about human rights, you must have universality or you do not have it at all. If abuses take place in countries that I know very well, those are still abuses.

Then we heard from our friends Senators Di Nino, Doody and Andreychuk on September 18, 2003, a year later; from Senator Nolin on October 7; from Senators Di Nino, Kinsella and Lynch-Staunton on October 8; from Senators Nolin and Prud'homme on October 20, 2003. Some of us have been interested, but a full year has passed since my first intervention.

In view of all the answers that the Honourable Leader of the Government have given — and I appreciate them — and in view of the logic of all her answers and the logic of all the government's actions, the time has come for an inquiry.

I listened attentively this morning for an hour and a half to the first press conference given by Mr. Arar and his wife. It was an open conference, as is done in Canada. There is no doubt in my mind that nothing will satisfy Canadian public opinion but an open, public, independent inquiry as to exactly what took place in New York regarding the immense abuse that was suffered by this Canadian citizen there and by some forces in Jordan.

I am somewhat nervous and surprised that no one has yet asked this question today. Will the government now consider holding the public, independent inquiry that was requested earlier by my other colleagues in this house?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the chair of the Commission for Public Complaints against the RCMP has initiated a complaint, as permitted under the Royal Canadian Mounted Police Act. That was done prior to Mr. Arar's press conference today. As a result of that press conference, I can only assure honourable senators that the Government of Canada is reviewing that matter. Cabinet was meeting at the time of the press conference, so none of us were able to watch it, but after cabinet has reviewed that conference, they will then determine if the present process is adequate.

INDUSTRY

INTERNATIONAL COMPETITIVE STANDING

Hon. W. David Angus: Honourable senators, in the press daily since last Thursday, we have seen reports that, according to the World Economic Forum, Canada's competitiveness ranking has plummeted from third to sixteenth in just two years. The rating appears to be plummeting earthwards, very much like the

Sea King helicopters. Among factors cited by the respected forum, which represents 95 nations, are distorted government subsidies, favouritism in government decisions, bureaucratic red tape, foreign-ownership restrictions and taxes, among other things. However, the biggest reason cited for Canada's embarrassing fall is a clear decline in the level of confidence held by business operators in the government's ability to limit corruption and bias in the public sector.

Honourable senators, 10 years ago the Prime Minister came to office with a Red Book that devoted a full chapter to governing with integrity, and a full chapter as well devoted to an innovative economy. What went wrong? Why are we slipping in competitiveness? Why has Canada fallen behind in the level of confidence that business operators worldwide have in the Canadian government's ability to limit corruption?

Hon. Sharon Carstairs (Leader of the Government): The honourable senator refers to the WEF, which is the World Economic Forum. That forum is one of many organizations that publish rankings of countries each year, but I think it is important to note that their rating is based on a survey of only 75 business executives in Canada. That is the extent of the engagement there. On the other hand, a study done by KPMG last year ranked Canada as the leading cost-competitive country among the most advanced industrial economies. We know that we are the leading economic nation in the G7. So, yes, to answer honourable senator's question, the report is worthy of our examination. It is a report which we must consider, but we should consider it in tandem with other reports, such as that of *The Economist* magazine which ranks Canada as one of the best places in the world to invest and to do business.

Senator Angus: Honourable senators, whether the government leader accepts the findings of this respected international forum or not, its reports are considered by decision-makers around the world when they seek safe places to invest their funds. A report like this can only damage Canada's reputation.

There is, of course, some good news in the report in certain areas, including the banking sector, Internet access in schools, and our communication systems. However, what steps is the government prepared to take to deal with the evidence that our tax system is inefficient, that there is favouritism in the decisions of government officials and that there are excessive amounts of bureaucratic red tape delaying key government decisions on business matters? Does the government not see this as a wake-up call?

Senator Carstairs: Honourable senators, clearly the report of the WEF must be considered, but it must be considered in tandem with the published reports of many other organizations. For example, when this report came out, James Milway, Executive Director of the Toronto-based Institute for Competitiveness and Prosperity, dismissed the report, saying, "There is less there than meets the eye."

I think it is quite clear that Canada remains a very competitive economy.

HEALTH

RESIGNATION OF FORMER ASSISTANT
DEPUTY MINISTER OVER ALLEGATIONS
OF BRIBERY AND FRAUD

Hon. Marjory LeBreton: Honourable senators, I would like to follow up on some questions I posed earlier regarding Mr. Paul Cochrane and his assistant Aline Dirks, formerly of Health Canada.

On September 17 in this place, the government leader in the Senate stated that the allegations pertaining to bribery and fraud came after Mr. Cochrane had resigned from the government and not before. Now we know that Health Canada began a forensic audit in October of 2000 about the use of public funds. In December of 2000, Mr. Cochrane was suspended from the public service. Yet in December of 2002, Public Works hired Aline Dirks, and in March 2003 Paul Cochrane was hired. In total, the contracts were worth approximately \$100,000.

My question again to the Leader of the Government in the Senate is: How did it come to pass that someone who had been suspended from the public service with allegations of the misuse of public funds, bribery and fraud can be hired back as a consultant?

• (1450)

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as I have told the honourable senator in the past, in this country you are innocent until you are proven guilty. Allegations do not make for a conviction. In the case of Mr. Cochrane, forensic audit led to serious criminal charges having been laid against him. That has taken place and those trials will proceed in the due process of time.

Senator LeBreton: Are there no precautionary measures? Surely they could have hired people on contract other than Mr. Cochrane and Ms. Dirks.

A series of audits has been conducted on the former Health Canada branch that Paul Cochrane headed up. Former deputy minister David Dodge told the Senate Standing Senate Committee on Banking, Trade and Commerce that senior management was in the process of addressing a number of issues concerning the old medical services branch when this particular incident came to light. Yet, despite concerns about his management, Mr. Cochrane was awarded a \$7,000 bonus for his performance in 1999-2000.

Can the Leader of the Government tell us how a performance bonus can be awarded to someone who headed up a branch that was the subject of audits, including a forensic audit?

Senator Carstairs: Honourable senators, it would appear that these performance bonuses are awarded quite readily. As the honourable senator is well aware, 95 per cent of public servants who are eligible for the bonus system seem to collect. That would appear to me to be good reason to investigate carefully how bonuses are awarded, and I understand that is being done.

VETERANS AFFAIRS

VETERANS INDEPENDENCE PROGRAM—
ENTITLEMENT TO WIDOWS

Hon. Michael A. Meighen: Honourable senators, last week, the House of Commons unanimously approved the sixth report of its Standing Committee on National Defence and Veterans Affairs.

In that report, it was unanimously recommended that lifetime VIP benefits, program benefits, be paid to all war veterans' widows, including those whose husbands had died before May 12, 2003. This measure is intended, as honourable senators are well aware, to correct a decision made by Veterans Affairs earlier this year that, unfortunately, granted lifetime benefits only to those widows whose husbands had died after May 12, while at the same time arbitrarily leaving 23,000 widows with no VIP benefits. Each day that passes for these widows is obviously another day without much needed help around the home.

My question to the Leader of the Government in the Senate is this: In view of the unanimity surrounding this question in this chamber and in the other place, and of its critical importance to some 23,000 widows of Canadian war veterans — and, keeping in mind that we, as a nation, will be celebrating Remembrance Day in exactly one week's time — can the minister tell all honourable senators when her government will do the right thing and make an announcement of its intentions?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I can tell the honourable senator that before the unanimous report was tabled, the Prime Minister made an undertaking to review this file, and that review is ongoing.

Hon. A. Raynell Andreychuk: Honourable senators, I am tempted to ask a supplementary to Senator Meighen's question. Surely, after a report on what I would call a pretty straightforward issue such as the House report, what is left to investigate on behalf of these widows? Surely it is a question of compassion versus scrutiny, if I can call it that.

Senator Carstairs: Honourable senators, it involves a little something in the order of \$300 million.

Senator Andreychuk: I think that taxpayers would consider that \$300 million is justified and reasonable to assist those whose families put their lives in harm's way to protect us.

Senator Carstairs: I will certainly convey to the Government of Canada that honourable senators think it is reasonable. I would therefore hope that, if the expenditure of that amount would result in fewer dollars being paid out to the provinces for the health care delivery system, you would also be supportive of that.

Senator Andreychuk: I do not think that is a fair comparison. This government spends a lot of money supporting loans for companies and risk ventures. I can also say that many other dollars are quite properly spent. However, in weighing the humanitarian need in this instance and the need for justice, it has nothing to do with how much money goes to the provinces. The relevant question is how the government federally exercises the discretion with which it spends its own money — lest I bring up the gun registry or the purchase of jets. There is discretionary spending within the government envelope, and I would urge it to exercise that discretion in favour of these widows.

Senator Carstairs: Honourable senators, the senator is quite right that the government does have to set priorities, and that is what the government is considering when deliberating on this issue.

Senator Andreychuk: I should hope it would stop deliberating and start acting, as one of its final gestures.

FOREIGN AFFAIRS

IRAQ—RECONSTRUCTION ASSISTANCE

Hon. A. Raynell Andreychuk: Honourable senators, Canada has agreed to contribute \$300 million to help with the reconstruction in Iraq. Yet, the dire security situation has prevented the release of much of the money pledged. Indeed, the death toll of U.S. soldiers in Iraq now exceeds the number of deaths the United States suffered during the war itself. Neither aid nor humanitarian workers are immune from attack, as the Red Cross in Iraq can testify.

I know that the Minister for International Cooperation pledged, as part of the \$300 million, a \$100 million contribution to the International Reconstruction Fund Facility for Iraq, stating:

Our view at this point is that there are sufficient conditions in place to give us confidence that the Fund will serve to move Iraq's reconstruction agenda forward.

My question to the Leader of the Government in this chamber is: What are those conditions? Do they relate to the fund itself or do they relate to the security situation in Iraq?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as the honourable senator knows, one of the initiatives that was announced is the training of police officers. That will not take place in Iraq. My understanding is that it will take place in Jordan. There would be no safety concerns for those delivering that training there.

There are other such opportunities. Clearly, the safety issue is a significant one. We know that the Red Cross has pulled out a great many of its workers, and that the United Nations has pulled out a great many of its workers. It will be difficult to spend these dollars if the conditions are such that we cannot get the aid to the people in Iraq who need it the most.

Senator Andreychuk: As a supplementary, is the minister saying that some of the \$100 million has been disbursed in this training, or is it coming out of the other \$200 million pledged? In other words, is money actually going into reconstruction on the ground that Iraqis can see, or is it the situation that the money will not be put directly into Iraq but will be used for training off ground?

Senator Carstairs: Honourable senators, my understanding is that \$10 million of the \$100 million has been put aside for police training, which was determined to be an essential measure in order for the other dollars to be effectively spent.

[Translation]

QUESTION OF PRIVILEGE

SPEAKER'S RULING

The Hon. the Speaker: Honourable senators, In accordance with rule 43, Senator Kinsella gave written and oral notice of a question of privilege that was subsequently considered yesterday at the conclusion of Orders of the Day. The question of privilege being raised by Senator Kinsella challenges the meeting of the Standing Committee on Rules, Procedures and the Rights of Parliament held last Friday, October 31. During the course of that meeting, the committee completed clause-by-clause consideration of Bill C-34, establishing separate ethics officers for the Senate and the House of Commons.

• (1500)

Earlier today, the committee presented its report on the bill without amendment. All of these actions, according to Senator Kinsella, constitute a contempt of Parliament.

In the view of the Deputy Leader of the Opposition, the contempt arises from the fact that the conduct of the committee was already under review through a point of order that was awaiting a Speaker's decision. "Holding a meeting while the validity of a previous meeting has been taken under advisement by the Speaker carried with it," as the senator explained it, "the clear implication that the ruling of the Speaker and, thus, of the chamber is irrelevant." The meeting of the committee last Friday, according to Senator Kinsella, was an improper action taken in contempt of the chamber itself.

[English]

Senator Robichaud, the Deputy Leader of the Government, then spoke to contest the merits of the question of privilege. In his estimation, no *prima facie* case for a question of privilege has been established. The actions taken by the Rules Committee last week were, according to the senator, the result of decisions that had been made by its steering committee with respect to the consideration and disposition of Bill C-34. In the Deputy Leader's view, there was no motion or order of the Senate to prohibit the committee from meeting and no senator was prevented from participating in the committee's deliberations at meetings that were properly called following the required notice.

[Translation]

In supporting the position of the Senator Kinsella, Senator Lynch-Staunton requested that due consideration be given to the long-standing customs and traditions of the Senate, not just to its written rules. In fact, as the Leader of the Opposition explained, this is the basis of the question of privilege. Alluding to the point of order that had been raised last week, Senator Lynch-Staunton maintained that the rights of certain senators sustained by custom and tradition have been violated. This breach of their rights was now compounded by the committee's actions to meet last Friday and to adopt a report on Bill C-34.

[English]

Several other senators participated in the debate on the question of privilege. Senator Milne, the chair of the Rules Committee, disputed the notion that the committee was effectively immobilized by virtue of a pending ruling from the Speaker. Senator Andreychuk, on the other hand, suggested that the point of order raised with respect to the committee's meeting last Thursday also had inferential implications that undermined the validity of what occurred last Friday. Senator Fraser defended the process that the Rules Committee followed in providing notice for the Friday meeting. The senator also noted that, in comparison to the complaint regarding the Thursday meeting, there were no scheduling conflicts affecting the ability of any senator to attend. For Senator Stratton, the fundamental question is one of cooperation or rather the lack of it. Next, Senator Rompkey asked me to take into account what occurred in 1991 when the Rules Committee met to adopt important amendments to the *Rules of the Senate* despite a deliberate boycott by the Liberal opposition.

Finally, Senator Kinsella made another intervention to close the debate on the question of privilege. He reiterated the point that, in his view, there is a tradition suspending any activity that is the object of a ruling by the Speaker until the ruling is made. Based on this understanding, the Rules Committee's meeting last Friday and the presentation of its report on Bill C-34 violated this tradition and constituted a breach of privilege. That the ruling made earlier today did not sustain the point of order, according to Senator Kinsella, did not materially affect this basic proposition. The meeting of the Rules Committee last Friday, based on this perspective, is invalid and the report adopted by the committee is equally invalid.

[Translation]

Let me begin by thanking all honourable senators for their participation in the debate on the question of privilege. It is always a challenge for the Speaker to come to terms with these complex procedural issues. As Speaker, I am duty bound to be concerned with my obligation to balance as best I can the opposing principles that are at the core of our parliamentary system — to permit the transaction of business in a timely manner while at the same time preserving the right of opposing factions to

be properly heard. In fulfilling this responsibility, I am conscious of the need to take into account the traditions and customs of the Senate, but I am equally obliged to abide by the *Rules of the Senate* whenever they provide clear direction.

[English]

Rule 43 provides some guidance on the procedures to be followed in raising a question of privilege for the purpose of obtaining a ruling from the Speaker on its prima facie merits. The notice requirements have been met and the arguments for and against the question of privilege have been made. The question of privilege was raised at the first opportunity and it involves a matter within the competence of the Senate to correct. What remains to be determined, however, is whether the matter of the question of privilege is a "grave and serious breach."

Senator Kinsella has argued that the question of privilege he alleges in this case is in fact a contempt of Parliament. According to *Marleau and Montpetit: House of Commons Procedure and Practice*, on page 52, a contempt of Parliament refers to:

Any conduct which offends the authority or dignity of the House, even though no breach of any specific privilege may have been committed...

The text continues and states:

Contempt may be an act or an omission; it does not have to actually obstruct or impede the House or Member, it merely has to have the tendency to produce such results.

Erskine May: Parliamentary Practice points out that it is not really possible to list every conceivable contempt, though it generally relates to misconduct of some kind that impedes either House of Parliament in the performance of its functions.

In this case, the contempt of Parliament that allegedly infringed the rights of some senators relates to the decision of the Rules Committee to meet last Friday despite the fact that questions about the committee meeting on Thursday, October 30 were the object of a point of order awaiting a ruling from the Speaker. It is being asserted that because of this impending ruling, the committee was not entitled to meet and to pursue its business until such time as the ruling was made.

Although I have been asked not to neglect the traditions and customs of the Senate, I am hard pressed to understand how they relate to this case in the way that has been suggested. It is true that an item on the Order Paper is normally suspended once a point of order has been raised concerning a procedural question requiring a ruling from the Speaker. This is because it is usually not possible to pursue the item within the chamber while its procedural probity is in question. There are numerous examples where this has occurred. It is not invariable, however. Debate on two Royal Assent bills last year, for example, was not suspended following a point of order on the possible need to seek royal consent from the Crown.

In dealing with committees, we are confronted with something that is quite different than an item of Senate business on the Order Paper. The workings of a committee are not the same as items on the Order Paper. By tradition, custom and practice, Senate committees are generally autonomous in the way they conduct their business. This is the case despite the fact that committees receive their authority from the Senate. Each standing committee has a mandate under the *Rules of the Senate* and receives from time to time orders of reference to undertake certain specific work. Committees expect to conduct their affairs without undue interference from the Senate itself. Arrangements are often made between members of the government and opposition to guide the operations of committees. As has been discussed, time slots are assigned to committees based on an understanding reached between the leadership of the parties, not by order of the Senate. This is done, in part, to better accommodate the needs of senators who are often members of several committees. Each committee elects a chair and a deputy chair to regulate the proceedings of committee meetings. Most committees also establish steering committees to set the agenda and schedule of their meetings. All of this is done without reference to the chamber and even less to the Speaker.

• (1510)

In my ruling yesterday, I referred to a passage from Beauchesne's 6th edition, at citation 760(3) which explained that the Speaker of the other place has declined many times to exercise procedural control over committees. I stated at that time that this proposition is no less true in the Senate; it is one of our customs and practices. Now, however, it would seem that the question of privilege is expecting me to do the reverse and to go against this practice.

The point of order that was raised last Thursday addressed an objection to the arrangements that had been made to a meeting of the Rules Committee that morning. As I understood it, neither the committee's mandate nor its specific order of reference was in question. Though I was fully prepared to make my ruling at the time, circumstances intervened to prevent me from doing so. Nonetheless, there was nothing in the point of order to indicate that the committee was not competent to carry on its work. The objection to the method followed by the committee with respect to one meeting did not put into question the entire operations of the committee or its ability to call more meetings. To suggest otherwise would seriously undermine the ability of committees to function and would even jeopardize the work of the Senate itself. If I were to accept the underlying proposition of the question of privilege, any point of order could halt the operations of any Senate committee at any time. I do not believe that this is right. This is not correct procedurally and is contrary to the Senate's traditions.

As I tried to indicate in my ruling on the point of order, I appreciate the sense of grievance that some senators of the opposition, as well as some senators from the government side, have expressed in respect to the pace that is being followed in the deliberations on Bill C-34. On the one hand, some senators are convinced that there is need for more time to study this complex

question. The government, on the other hand, feels that the work already done by the Rules Committee should be sufficient to enable it to review the bill within a limited time. This is not a procedural issue, but a political one. With respect to this point, I appreciate the analogy that was made by Senator Lynch-Staunton regarding the decision of the Supreme Court and the matter of a unilateral decision to patriate the Constitution: legally it was possible, but it might not be prudent or right. As Speaker, however, I have no role in resolving these different points of view because they are political and not procedural.

Based on the arguments that have been made, it is my ruling that there is no *prima facie* question of privilege. No compelling case has been made that the Rules Committee committed a contempt of Parliament in meeting last Friday and adopting its report on Bill C-34.

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—MESSAGE FROM COMMONS— MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C.:

That, with respect to the House of Commons Message to the Senate dated September 29, 2003 regarding Bill C-10B:

(i) the Senate do not insist on its amendment numbered 2;

(ii) the Senate do not insist on its modified version of amendment numbered 3 to which the House of Commons disagreed;

(iii) the Senate do not insist on its modified version of amendment numbered 4, but it do concur in the amendment made by the House of Commons to amendment numbered 4; and

That a Message be sent to the House of Commons to acquaint that House accordingly,

And on the motion of the Honourable Senator Watt, seconded by the Honourable Senator Adams, that the motion, together with the message from the House of Commons dated September 29, 2003, regarding Bill C-10B, An Act to amend the Criminal Code (cruelty to animals), be referred to the Standing Senate Committee on Legal and Constitutional Affairs for consideration and report.

Hon. John Bryden: Honourable senators, the principal reason given by the Minister of Justice for the cruelty to animals provision of the original Bill C-10 was to increase the penalties for violation of the Criminal Code offences relating to cruelty to domestic animals, and that it was not intended to create new rights or offences.

As the Standing Senate Committee on Legal and Constitutional Affairs examined the provisions of what is now Bill C-10B, we found that an entirely new regime was being introduced and a new part of the Criminal Code created.

The Legal and Constitutional Affairs Committee has spent a great deal of time on this bill. They have heard many witnesses, and individual senators have devoted considerable time away from the committee attempting to develop amendments that would move the bill along and yet protect the interests of persons legitimately dealing with animals, both domestic and wild. The bill has been improved, but it has a small number of serious flaws left in it.

I wish to associate myself with the excellent and serious analysis given in this chamber by our chairman, Senator Furey, and with the other members of the committee who spoke to the last position taken by the Department of Justice. In particular, I wish to support the amendment of Senator Watt dealing primarily with the aspect of the bill on the rights of Aboriginal peoples, as well as his proposal to refer the bill back to the Legal and Constitutional Affairs Committee.

Some Hon. Senators: Hear, hear!

Senator Bryden: I support returning this bill to the committee because many of us do not want to give up on this bill yet. We are so close and yet so far. The few issues left affect the fundamental rights of hundreds of thousands of people. I believe that, perhaps, the committee can resolve these issues.

Senator Watt and others have adequately canvassed the Aboriginal peoples' concerns to be considered by the committee.

I will deal quickly with the new criminal offence created within the new regime, that is, the criminal offence of killing an animal without lawful excuse, and give an approach that might help the committee and the government reach a consensus.

The proposed section 182.2(1) contained in the bill states:

Every one commits an offence who, wilfully or recklessly,

(c) kills an animal without lawful excuse;

The courts have said that "without lawful excuse" only means that an accident, duress or mistaken fact are implied by that

phrase at common law. They have also said that the phrase has little significance unless Parliament specifically indicates that it has a particular meaning.

The failure to distinguish between the treatment and the killing of domestic animals that are in the care and control of a person, which has been regulated and has specific prohibitions and penalties attached to it in the Criminal Code, seems to have prevented the other place from recognizing that the creation of the new Criminal Code offence of killing an animal that is not under any person's care or control — a wild animal — does not have the defences that are available to the owners of domestic animals.

The new offence to wilfully kill an animal — any animal — is inconsistent with the common law right to kill an animal. The Criminal Code is clear that the common law defences are not available if they are inconsistent with the code. To put the new offence into the code would negate any common law defences that would otherwise be available, because it would be inconsistent with the statutory presentation that that is an offence.

The case law indicates that the possession of a permit or licence issued by a provincial government does not constitute a lawful excuse. An example is the *Jorgensen* case where a video store owner had the approval of the provincial censor board but, nevertheless, the police charged him under the Criminal Code. The Supreme Court of Canada ruled that the approval of provincial authorities did not constitute a lawful excuse.

Indeed, Mr. Justice Sopinka of the Supreme Court stated:

Two propositions which are somewhat related militate against the submission that the OFRB approval (i.e. the provincial permit) can constitute a lawful justification or excuse. First, one level of government cannot delegate its legislative powers to another. Second, approval by a provincial body cannot as a matter of constitutional law preclude the prosecution of a charge under the Criminal Code.

• (1520)

Another illustration is the fact that when provinces wished to grant gambling licences for the purpose of conducting lotteries to raise funds in their provinces, they attempted to get specific agreements and exemptions from the federal government to the application of the laws in the Criminal Code against gaming.

We need to give "lawful excuse" a direct meaning and application to the new penalty created by this bill. This might be accomplished by adding a clause after proposed section 182.2(1)(c), which would say — and I am not proposing an amendment, but rather suggesting it be considered by the committee —

For the purposes of this clause, "lawful excuse" includes:

(a) the possession of a valid licence or permit to hunt, fish or trap issued by the Government of Canada, a province or a territory; and,

(b) the right of Aboriginal peoples to hunt, fish and trap in accordance with their inherent rights under section 35 of the Constitution and in accordance with any treaty or agreement between the Crown and Aboriginal peoples.

I believe that the committee, given the chance to consider this type of approach or a variation of an approach such as this, particularly the one relating to Aboriginal issues, may be able to come up with a reading of lawful excuse and a listing that makes it acceptable to the committee and to this chamber.

My position, in support of Senator Watt's amendment, is that I would support sending this bill back to the Standing Senate Committee on Legal and Constitutional Affairs to have them take another opportunity to use such an idea to bring this very difficult issue to a conclusion.

Hon. Gérard-A. Beaudoin: Would the honourable senator accept a question?

Senator Bryden: Certainly.

Senator Beaudoin: I agree with everything that the honourable senator has said. The resumé that was made by the chair of our committee was very good.

My question is this: Is it not also possible that in this case we are going against the fiduciary duty that we have under section 35 of the Canadian Constitution as interpreted by the courts? I believe that we are going against a principle that is enshrined in the Constitution. The fiduciary duty is mandatory. If we do not accept it, does the honourable senator not think that we are going against the Constitution?

Senator Bryden: Senator Beaudoin is much more familiar with the details of the Constitution and section 35 than I. However, my understanding is that what the honourable senator states is correct. Over all of these rights and concerns in relation to Aboriginals and their use of the land and resources stands the fiduciary relationship that initially comes from the Crown, which is a relationship we have as a society to our Aboriginal people.

Hon. Anne C. Cools: Honourable senators, if Senator Carstairs does not wish to speak, I move adjournment of the debate.

The Hon. the Speaker pro tempore: Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: No.

The Hon. the Speaker pro tempore: Will all those honourable senators in favour of the motion to adjourn please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker pro tempore: Will all those honourable senators opposed to the motion to adjourn please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker pro tempore: In my opinion, the "yeas" have it.

Senator Cools: We cannot hear!

The Hon. the Speaker pro tempore: In my opinion, the "yeas" have it.

On motion of Senator Cools, debate adjourned.

BUSINESS OF THE SENATE

Hon. Anne C. Cools: On a point of order, I thought something else was happening.

What was that vote on, Your Honour, and why were we voting on it?

Senator Robichaud: It was on you.

Senator Tkachuk: On your adjournment.

Senator Cools: Why was there a vote on the adjournment?

Senator Carstairs: It does not matter. They can vote at any time, Senator Cools.

Senator Lynch-Staunton: The government does not want its own legislation. That is what it is all about.

Senator LeBreton: The government is filibustering.

Senator Lynch-Staunton: The Liberal Senate goes against the Liberal committee.

The Hon. the Speaker pro tempore: The motion of Senator Cools to adjourn the debate was carried. We are now on Bill C-25.

Senator Cools: Your Honour, I am sorry about this, but quite often in this corner we cannot hear. It sounds unbelievable. I do not understand what happened, but many things —

The Hon. the Speaker pro tempore: We are now on Bill C-25.

Senator Lynch-Staunton: Some people want us to be on TV.

Senator Cools: I heard that, honourable senators.

PUBLIC SERVICE MODERNIZATION BILL

THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Harb, for the third reading of Bill C-25, to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts.

Hon. Anne C. Cools: Honourable senators, I rise to speak to third reading of Bill C-25. As honourable senators know, my concern is that Bill C-25 will repeal the requirements of public servants to take the oath of allegiance.

At second reading, I expressed my objections, which found no favour with the government or with the minister. I will take the opportunity today to record my objections again.

Honourable senators, we should be aware that what is happening with this bill is that party discipline and the whip are being used to obtain a vote repealing the oath of allegiance for public servants. I contend that this is no simple matter; in point of fact, it is a matter of serious constitutional import.

Before I proceed with my remarks, I wish to take the opportunity to say that earlier today, this morning at 11 a.m., I attended the sixth annual Senate Ceremony of Remembrance. The event was an enormous success. It was sponsored by the Speaker of the Senate, Senator Dan Hays, and organized by our Usher of the Black Rod, Mr. Terrance Christopher, and our Mace Bearer, Mr. Richard Logan. I want to put on the record my appreciation and the appreciation of the many who attended for the efforts of these two gentlemen in organizing this event.

• (1530)

Interestingly enough, honourable senators, this morning the service focused on remembering the soldiers and those who participated in the Korean War. That was especially pleasing to me because, oftentimes, the Korean veterans are sometimes neglected.

Honourable senators, in the same vein as we are now leading up to Remembrance Day, we and the entire country will be recalling and remembering our veterans, our war dead and the war effort. In fact, we shall be recalling and remembering their supreme service. These ceremonies bring home the enormity of the sacrifice made by these young people. This morning, I was deeply touched to see that in the organization of the event the Usher of the Black Rod and the Mace Bearer included the Royal Anthem *God Save the Queen*.

Honourable senators, we live in an era of dismantling the principles of the system and deconstructing our history. I want to use this opportunity to say that all those soldiers, Canadians, men and women who served in the forces all marched in the service of God, king and country. We shall remember them.

I wanted to begin by putting that on the record. When soldiers go out to be that heroic, that self-sacrificing, they usually serve a higher ideal than just serving a government. Governments can be pretty bad, but the sense of king and queen is a notion higher than government. Governments may be removed, and governments may be bad and good, but the king and queen remain in perpetuity. It is a wonderful notion and one that I feel quite deeply and emotionally about.

Honourable senators, the law of allegiance is the ancient law that sets out the moral structure of the relationships between the governor and the governed. Between queen and subjects, allegiance is defined — and I shall read a definition from *Jowitt's Dictionary of English Law* — as being derived from Norman French, "aleggeaunce", from "lige" meaning "pure, absolute", unconditional homage owed to the lord liege. Allegiance, then, is described as follows:

...the natural, lawful, and faithful obedience which every subject owes to the supreme magistrate who oversteps not his prerogatives; the tie or *ligamen* which binds the subject to the sovereign in return for that protection which the sovereign affords the subject...

Honourable senators, that is a peculiar aspect of the law of allegiance, the very personal relationship that exists between queen and subject.

The oath of allegiance, as taken, sets the moral underpinnings regarding the performance of duties in public service. We must understand that an oath is a solemn declaration, which is made on an invocation of one's deity by calling forth God as a witness, so to speak. An oath is that declaration with that invocation, where one calls upon God — "so help me God" — to be a witness and to give testimony to what has happened.

Honourable senators, the oath of allegiance that we take when we come to the Senate — and it is found in the fifth schedule of the BNA Act — is as follows:

I...do swear, That I will be faithful and bear true Allegiance to Her Majesty Queen Elizabeth. So help me God.

Honourable senators, this oath of allegiance, as I said, forms the moral structure and moral underpinnings of our constitutional system. It is complemented by another part of the oath system, which is the oath of Her Majesty at the coronation, and it is called the coronation oath. I would like to read from the Form and Oath of Her Majesty's Coronation a part of the coronation oath as taken by Her Majesty Queen Elizabeth II on June 2, 1953. In it, the archbishop asked:

Will you solemnly promise and swear to govern the Peoples of the United Kingdom of Great Britain and Northern Ireland, Canada...and of your Possessions and the other Territories to any of them belonging or pertaining, according to their respective laws and customs?

Her Majesty is swearing to govern in accordance with the law and customs.

Her Majesty responded:

I solemnly promise so to do.

Then the archbishop administers another part of the oath, saying:

Will you to your power cause Law and Justice, in Mercy, to be executed in all your judgments?

The Queen responded:

I will.

Then the archbishop said:

Will you to the utmost of your power maintain the Laws of God and the true profession of the Gospel?

The Queen responded:

All this I promise to do.

Then the Queen kneeled and with Her hand on the Bible continued::

The things which I have here promised, I will perform, and keep. So help me God.

Honourable senators, if members of Parliament and members of cabinet would rely on and study the oaths of allegiance and the coronation oath, they would discover that those two pronouncements lay out the ethical and moral conditions of office and service. If we truly followed these pronouncements, we would not need ethical bills and ethical packages because the observance of these is, indeed, an ethical matter.

Honourable senators, the question that I have raised and what has been especially bothersome to me about repealing this oath is that there has been no public debate whatsoever in this country on the matter. I observed that the National Finance Committee in its hearings called no witnesses on this particular question. It is true that Minister Robillard appeared before the committee and answered questions posed by myself, I believe, but no independent witnesses appeared before the committee to give evidence about the propriety or the wisdom of repealing the oath of allegiance. I found that to be a terrible oversight. I found it also very bothersome that millions of people in this country have no idea

that this is happening in Bill C-25. Bill C-25 has not been attended by much publicity.

In addition, I remind senators of the distress that was caused last year in October when John Manley made his not-so-flattering statements about Her Majesty while Her Majesty was actually visiting the country. There is no need for me to repeat my concerns because I have raised them here in this chamber.

• (1540)

Honourable senators, it is a fact that if we look to the committee proceedings, we find that this matter of the oath of allegiance received little attention. I would have hoped, and I would have thought, that the committee would have heard several witnesses on this matter.

I have one final point, on the committee proceedings. I questioned Minister Robillard twice on the matter, and in both instances I had the distinct impression that she was not familiar with the issues and that she was not really current on the law of allegiance. I also gleaned that the initiative was not hers at all. From that, I gathered maybe it was that of someone in the department, or it was departmental. However, what is crystal clear if you look at the testimony — for example, the Standing Senate Committee on National Finance proceedings, Tuesday, September 16, 2003 — you can see very clearly that the minister has difficulty answering the questions.

She brought along to that committee one particular lawyer, a departmental lawyer from the Department of Justice, whose name is Henry Molot. His answers were, to my mind, extremely insufficient. What is clear is that the whole phenomenon of the prerogative in respect of the Queen's right to receive allegiance is not well understood. Many of these lawyers, in my opinion, stumble with these questions very quickly and easily.

It would do us well, honourable senators, if we could begin to study some of the law that has governed this grand institution at some point in our endeavours — being the law of the prerogative on the one hand and the law of Parliament on the other hand. It was these two grand systems of law that were supposed to guide and direct the passing of statutes in this place.

Anyway, those are my thoughts. It is my view that the comprehension of this set of laws is disappearing very rapidly from our midst. For example, again on the law of the prerogative, I remember reading the lawsuit of now Lord Black of Crossharbour, Conrad Black, against Mr. Chrétien. I read what the judges in the case had to say about the law of....

The Hon. the Speaker *pro tempore*: Honourable Senator Cools, I regret to inform you that your time for speaking has expired.

Senator Cools: Perhaps I could make a closing comment?

Hon. Senators: Agreed.

Senator Cools: I was saying it became clear quickly that those judges are no longer conversant with the law of the prerogative in these areas.

Honourable senators, because Bill C-34 is coming up today, I would love to use this as an opportunity to encourage senators to put some time and study into these two very difficult areas. In the meantime, I thank honourable senators for their attention, and I hope that I have recorded my very strong objection to the alteration and removal of the oath of allegiance. I sincerely believe that it should have taken more than a simple bill to do this. Her Majesty Queen Elizabeth should have been involved in this matter, at least through the Governor General of Canada. I am sad, and very sorry, that colleagues on the committee did not see to it that the Constitution of this place and the Constitution of this land was upheld in respect of the relationship between Her Majesty the Queen and Her Majesty's subjects, the citizens of Canada.

Hon. Tommy Banks: Honourable senators, I want to say — in perhaps a more colloquial and not nearly as well-informed a way as Senator Cools has referred to these questions of the oath — that in respect of both the oaths that I can find in this bill which is now before us, they are, if you will permit the colloquialism, the wimpiest oaths I have ever seen anywhere about anything.

The first one, which is in section 246, says:

I,..... do swear (or solemnly affirm) that I will faithfully, truly and impartially, to the best of my judgment, skill and ability, execute and perform the office of.....

Faithful to what? Faithful to whom? You cannot simply be faithful in an abstract, sort of free-standing way; you have to be faithful to something and you have to swear to something. This is nothing more than a vague promise to do sort of the best that one can under the circumstances. It is the Canadian answer to "as American as apple pie," which, in Canada, is "as Canadian as possible under the circumstances." This really wimps out. I agree that these are practically meaningless oaths, and if we are to have oaths such as this, we should simply strike them and not pretend that they are oaths in any meaningful sense.

[Translation]

Hon. Laurier L. LaPierre: Honourable senators, what this means is that the time has come for Canadians to be truly mature.

[English]

The time has come for us to be mature; the time has come for us to swear allegiance to our country; the time has come for us to say what we will do to the best of our ability, and we promise to the Canadian people — who are sovereigns of Canada — that we shall do our duty by them, and do it as well as possible. The day will come — and not too far in the future — when the successor of mine here in the Senate will swear allegiance to Canada, and not to the Queen of Great Britain and the kingdoms beyond the sea.

Senator Banks: May I ask a question?

Senator LaPierre: No.

Senator Cools: On a point of order, I would like to say that there is a requirement in the BNA Act that every senator here takes an oath of allegiance. I would like to submit that the statements that were just made are not harmonious with the sense of allegiance that is expected of the oath. If I can just find my copy of the oath — I have it right here.

The Hon. the Speaker pro tempore: Honourable senators Cools, I believe that this is —

Senator Cools: Honourable senators, the fact is that every senator who comes here —

Senator LaPierre: On a point of order.

Senator Cools: Every senator who comes here is called upon, in the presence of us all, to make declarations and to take an oath. Maybe some do not take it very seriously, but my point of view is that if it is such a hardship to do it, then do not do it. It is better not to come here and not take the oath than to make a mockery of those of us who believe and take our oath very seriously. I want to surprise Senator LaPierre and to let him know that all senators when they —

The Hon. the Speaker pro tempore: Honourable senators Cools —

Senator Cools: — take it very, very seriously.

Senator LaPierre: Enough is enough.

The Hon. the Speaker pro tempore: Order. Honourable Senator Cools, this is a point of debate, not a point of order.

Honourable senators, are you ready for the question?

Hon. Senators: Question!

Senator Cools: There is a point of order on the floor. Honourable senators want to speak to it.

The Hon. the Speaker pro tempore: Order. It was moved by the Honourable Senator Day, seconded by the Honourable Senator Harb, that Bill C-25 be read the third time. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

Senator Kinsella: On division.

Motion agreed to and bill read third time, on division.

• (1550)

PARLIAMENT OF CANADA ACT

BILL TO AMEND—THIRD READING— DEBATE ADJOURNED

Hon. Sharon Carstairs (Leader of the Government) moved third reading of Bill C-34, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

She said: Honourable senators, it is an honour to rise this afternoon to speak to third reading of Bill C-34, to amend the Parliament of Canada Act, to establish a Senate ethics officer and an ethics commissioner.

As many of you now know, because I have said so on a number of occasions, Bill C-34 is the culmination of over 3 decades of work by honourable senators and members in the other place on conflict of interest rules for Parliament. Until now, every effort has died on the Order Paper, including the 1973 Green Paper on Conflict of Interest in Parliamentarians, the 1978 Independence of Parliament act, the 1992 Stanbury-Blenkarn report, and the 1995 Milliken-Oliver report.

Conflict of interest provisions for honourable senators have been an evolving issue. Initiatives over the past three decades have included a range of statutory and non-statutory approaches for the appointment of a Parliamentary ethics office and the establishment of a code of conduct.

Over the past year and a half, honourable senators and members of the other place have renewed their efforts to develop a code of conduct for Parliament. In May 2002, the Prime Minister announced an eight-point ethics plan that included a code of conduct for parliamentarians inspired by the Milliken-Oliver report. In October 2002, I tabled in the Senate on behalf of the government a draft bill to establish an independent ethics commissioner and a draft code of conduct to be part of the *Rules of the Senate*. In April 2003, the Rules Committee interim report on these documents was tabled. All of the recommendations in this report were accepted by the government and included in Bill C-34.

The committee recommended that each House have its own ethics officer and Bill C-34 would establish a separate Senate ethics officer. The committee recommended that the Senate ethics officer be appointed after agreement of the leadership of the recognized parties in the Senate, followed by a confirming vote in the Senate. Bill C-34 provides for the appointment of the Senate ethics officer after consultation with the leaders of the recognized parties in the Senate, followed by adoption of a resolution in the Senate which is consistent with the approach for other officers of

Parliament. In other words, honourable senators, without a vote in this chamber, no appointment will be made. That is the important point.

The committee recommended that the term should be for seven years and should be renewable; Bill C-34 does this. The committee did not reach a consensus on whether to appoint the Senate ethics officer by statute or by rules. Bill C-34 takes what I believe is a balanced approach of appointing the Senate ethics officer by statute and of having conflict of interest requirements in rules that would be adopted by this chamber for our Senate and for our senators.

Of course, Bill C-34 only contains an appointment process for the Senate ethics officer. We already have conflict of interest provisions in our rules as well as in the Parliament of Canada Act. The Rules Committee has been considering whether to consolidate and modernize these provisions into a single code of conduct. However, that will be a matter for honourable senators in the future.

In other words Bill C-34 is framework legislation. It neither changes existing conflict of interest rules of the Senate nor enacts additional rules in this area. Thus, it will be for the Senate alone to establish rules of conduct that respect the privileges, immunities and practices of this house.

The Rules Committee has given particular consideration to the issues of constitutionality and parliamentary privilege. I am pleased that the witnesses heard by the committee confirmed that Bill C-34 does not affect the balance of powers between Parliament, the executive and the judiciary, nor does it raise new parliamentary privilege concerns. Mr. Robert Marleau, a former Clerk of the House of Commons and co-author of a respected commentary on parliamentary rules, Mr. Joseph Maingot, an expert on parliamentary procedure, and the Senate Law Clerk stated that the statutory appointment of a Senate ethics officer would not — I repeat, would not — undermine Senate privileges. Mr. Marleau, in an appearance before the Rules Committee on September 16, 2003, stated:

...the Senate ethics officer would simply be just another officer of the Senate and therefore at any time he or she would be executing his or her duties would be covered by usual privileges when any officer of the Senate exercises an order of the house or the committee.

Mr. Maingot, in his appearance before the same committee, stated:

...the legislation provides that the Senate would set out the rules dealing with the ethics of the senators. In that case, it is an internal matter of the Senate, and the courts have historically said that when you are dealing with the internal proceeding of the House or the Senate, you are dealing with a constitutional power. The courts, historically, have always been very differential to what the Houses of Parliament do.

On the privileges of Parliament provided for in the Constitution, Mr. Marleau stated:

On the issue of whether we are creating a new privilege, I would opine that no, this bill does not create a new privilege. It would not be a whole lot different than if you created a new committee of the Senate, hired a new committee clerk, and that committee clerk would be given orders by that committee, which would be covered by the usual parliamentary immunity.

Mr. Marleau also stated:

We have a long-standing practice of house officers being in statute. I am one as the interim Privacy Commissioner, who is in statute appointed by the Governor in Council and ratified by Parliament. The Clerk of the House of Commons, and I believe the Clerk of the Senate, find their genesis in the Public Service Employment Act and are appointed by the Governor in Council...

Some honourable senators have expressed concern about confidentiality for the work of the Senate ethics officer. The committee heard that the specific duties of the Senate ethics officer would be set out in the *Rules of the Senate*, where confidentiality would be detailed. The other place has taken this approach in the code of conduct that was recently reported from their committee. It is also the approach taken in the code set out in the Milliken-Oliver report.

All confidentiality rules governing the declaration of conflicts of interest and the registration or publication of assets would be established by the Senate and the Senate alone. The Senate would be within its rights to limit disclosure as the other place has done in the code of conduct report from committee and as the Milliken-Oliver report has recommended.

Honourable senators, Bill C-34 represents the culmination of 30 years of work by parliamentarians on the issue of conflict of interest. The Rules Committee has heard that the Parliament of Canada is behind the provinces and other Commonwealth countries on this issue. In these jurisdictions, a parliamentary ethics officer has benefitted legislators by providing them with a source of independent advice on ethical matters and by demonstrating to their constituents that they take ethical matters seriously. I believe that experience will be shared by honourable senators once the Senate ethics officer is approved by a vote of this chamber and finalized by the Governor in Council.

To those senators who suggest that we need more time to study this issue, I would say that we have been studying this issue for 30 years. We have, in Bill C-34, a balanced approach that is the culmination of our work. The provinces have an independent ethics officer and other Commonwealth countries have one as well. In the private sector there are rules for boards of directors, and the other place wants an independent ethics officer. In this

chamber, I believe that a majority of honourable senators believe that the time has come for the Senate to join the rest of the world in having an independent ethics officer reporting to Parliament. I would call on all honourable senators to support the passage of Bill C-34.

• (1600)

Hon. Anne C. Cools: Would the honourable senator take a question?

Senator Carstairs: Certainly.

Senator Cools: Honourable senators, I have several questions. I will ask them one at a time.

The proposed sections 72.06, 72.07 and 72.08 in the bill, under the heading, "Functions in Relation to Public Office Holders," use the words "Prime Minister" seven times. The word "Prime Minister" is very rarely used in any statute. It is not supposed to be used in statute since certain words do not have much legal existence.

Why is the title, "Prime Minister" used seven times in these proposed sections? It is most unusual. It would suggest that those proposed sections are the Prime Minister's sections. Would the Leader of the Government respond?

Senator Carstairs: The honourable senator should look at the proposed section 72.061 in the bill, which reads:

"The Prime Minister shall establish ethical principles, rules and obligations for public office holders."

Members of the Senate and members of the House of Commons, unless they are also members of cabinet and members of the parliamentary secretary grouping, are not public office holders in the definition of this bill. As it is the Prime Minister who will establish those ethical principles, rules and obligations, it is reasonable that he would be found listed in a number of its provisions.

Senator Cools: Honourable senators, another question relates to what has been historically called the independence of Parliament. The government would know that Parliament, for many centuries now, has been extremely jealous of and hostile to the introduction of new office holders into Parliament. I believe it was Mr. Marleau who said that appointing this new officer would be akin to appointing another clerk. That is not so at all.

As a matter of fact, the first statutes barring office holders were passed during the reign of Queen Anne in the early 1700s. This law existed in Canada until the time of Mackenzie King. It was based on the phenomenon that a Member of Parliament could not be a member of cabinet without submitting himself first for re-election by his constituency. Based on that, Mackenzie King was able to defeat Prime Minister Meighen and invoke that crisis.

The tradition and law of Parliament have been resistant to bringing into Parliament office holders or servants of the Crown. I ask the honourable senator why that grand principle of constitutionalism is being violated in Bill C-34?

In 1931, an act repealed parts of the law therein to allow only cabinet ministers not to have to seek re-election. The only office holders who can sit in Parliament are cabinet ministers, such as Senator Carstairs. In addition, Parliament declared over 200 years ago that it wanted no more office holders in its midst. Even the appointment of our house officers is different.

I have looked up the record. The Independence of Parliament Act was passed in 1868 by Sir John A., which replicated the act from Queen Anne's time. Why are we now being compelled to pass bills and to adopt a position in law that Parliament has historically rejected and to which it has been very hostile?

Senator Carstairs: In response to the honourable senator, I would refer her to the proposed section 72.06, which reads.

For the purposes of sections 20.5, 72.05 and 72.07 to 72.09, "public office holder" means —

The bill then provides a list of who is included as a public office holder

I would suggest to the honourable senator that, from very early times in the history of Canada, we have had ministers of the Crown, ministers of state and parliamentary secretaries, and we have had people who worked for those individuals.

We have certainly had others who have been appointed to represent the Parliament of Canada, such as the Privacy Commissioner, the Information Commissioner and the Commissioner of Official Languages. All of those are public office holders. They have received their authority sometimes through legislation and sometimes through custom and precedent.

Senator Cools: Honourable senators, perhaps Senator Carstairs could differentiate, because we are talking about officers of this place as opposed to officers of Parliament.

Honourable senators, do not be mystified by this term "officers of Parliament." Its history is very short and shallow. The real position of officers of Parliament is an entity still unknown, as was demonstrated in the case of former Privacy Commissioner Radwanski when Senator Lowell Murray raised what he thought would be the Senate's interests in an office of Parliament. He basically discovered that the Senate did not have much interest in it.

We are talking about the relationship between Parliament and office holders. By law and statute now, the only office holders who can sit and vote in Parliament are members of the cabinet. The other range of office holders can no longer take their seats here. For example, judges cannot take a seat.

There is an age-old standard — it is a couple of hundred years old — that members of Parliament are not to be subordinated or subjected in any form, way or fashion to servants of the Crown, which is what office holders are.

Senator Carstairs: In response to the honourable senator, that is exactly why her committee so wisely insisted that the Senate have its own ethics officer and that the Senate ethics officer not be the ethics officer for public office holders. The committee insisted that it should be two separate individuals.

The House of Commons chose to have their ethics officer and the public ethics officer as one and the same person, but we did not choose that, and I think it was a wise decision on the part of our committee to make that recommendation.

Senator Cools: Perhaps the honourable senator is not grasping my point. My point is about the relationship between members of Parliament and servants of the Crown, who are office holders. The bill obfuscates and confuses the matter. Most officer holders, such as cabinet ministers, who sit in Parliament are removable at pleasure. Our table officers, such as the clerk, are removable at pleasure.

The particular officer holder who will be appointed under this proposed legislation will be harder than the devil to remove. This office holder could only be removed on an address of the Senate to the Governor in Council.

The Senate does not make addresses to the Governor in Council, honourable senators. The Senate makes addresses to the Governor General or to Her Majesty, but not to the Governor in Council. This proposed section 20.2 (1) tells us clearly that not only is this initiative creating an office holder who will have the conduct and the activities of senators within his or her purview, but also that it would be very difficult to remove this office holder.

• (1610)

The terms that are used to describe this office holder are the kinds of terms that you find in the BNA Act in respect of judges — "during good behaviour." Honourable senators should know this. Honourable senators should know the deep confusion and deception in this bill.

For example, clause 20.2(1) says strongly that they hold office. The Senate ethics officer would hold office during good behaviour for a term of seven years and may be removed for cause. This is not proper. It should be either cause or good behaviour but not both. The words "for cause" in there and the address to the Governor in Council tells you clearly that that person will be loyal to the Prime Minister's office. A baby could see it from 10 feet away.

Hon. Norman K. Atkins: Honourable senators, I rise today to speak at third reading of Bill C-34, to amend the Parliament of Canada Act. As it pertains to us here in the Senate, it would establish a Senate ethics officer. This is not a subject upon which I originally intended to speak. However, as I sat and listened to the arguments on both sides, especially those of Senator Lynch-Staunton, Senator Andreychuk, Senator Sparrow and Senator Joyal, I had cause to reflect back on my life in politics and really question, as they have done, the need for this measure at all.

Few, if any of us, know anyone who got into politics for personal gain. Ethical issues arising here in the Senate are so few that I am sure, historically, over 135 years, they can virtually be counted on the fingers of one hand. The most recent, of course, was the matter of attendance, and we dealt with it. I would say, looking back from where we are now, that we dealt with it effectively.

Those honourable senators who are lawyers tell me that when legislation is drafted, it is drafted to deal with and address a particular evil, to ensure that, if that evil subsequently occurs, those perpetrators will be punished.

When I look at this bill and the circumstances surrounding its conception and the government's attempt to rush it through the Senate, I must ask myself: Why are we doing this? This, of course, is the same question Senator Sparrow asked when time allocation was introduced at second reading: Why, why, why? The answers are not terribly helpful. If it is to fulfil a 1993 election promise, my answer to that is that the government is a bit late in coming forward, 10 years later, with this legislation.

If it is addressed to ethics problems in the other place at the cabinet table, then bring in legislation that does just that. We have been calling for such legislation for years — legislation that would establish a truly independent ethics commissioner or counsellor as an officer of Parliament.

If this legislation is being introduced and rushed through to create the perception that this is a government that has high ethical standards and believes those standards should be imposed on all MPs and senators, my answer is that the government has missed the boat completely, as we already have rules and legislation in place — rules and legislation that have effectively dealt with this issue for many years.

Perception of this government aside, the reality is that there is really no need for this legislation as it affects the Senate. Having said that, I wish to make it perfectly clear that I agree totally with Senator Joyal and others who have expressed this same sentiment: that there is nothing more important for the sake of public governance than ethical standards for those who are governed and for those who govern. As Senator Joyal went on to say, and I

agree, the basis of effective government is public confidence, and that confidence is endangered when ethical standards falter, or appear to falter.

As many honourable senators have pointed out, this bill weakens the independence of the Senate and does nothing to invoke the so-called new high standard. My thesis is simple: We have been well served, and Canadians have been well served, by the regime presently in place. We have two extraordinarily competent officers present to serve us in the person of our Clerk and our Law Clerk and Parliamentary Counsel. These are people who have the expertise, experience and respect for this institution, the Senate, to advise on all issues related to ethics or conflict of interest.

As to the legal norms present to guide us, and them, we have the Criminal Code, the Parliament of Canada Act, the Senate rules and the parliamentary law of custom and precedence, and not to sound too philosophical, as that is Senator Kinsella's area, we have the inherent goodness of humankind.

All of these statutes, rules and customs, taken together, form a comprehensive compendium of the law as it relates to ethics and our conduct in this place. I believe we should be very careful, as we deal with Bill C-34, to ensure that, in our rush to react to the will of a Prime Minister searching for a legacy, we do not end up with a system guiding our ethics and conduct which is inferior to the one already in place.

This is a chamber of sober second thought. We should take the time to reflect on the need for this package, Bill C-34. I believe that if we take the time to study what we now have in place and compare it to the contents of Bill C-34, we will opt to maintain the current regime that has served this country well.

Hon. Tommy Banks: Honourable senators, I agree very much with what the Leader of the Government in the Senate has said about this bill. I do not believe that this matter can be put off any longer. There is inexorable pressure upon us to do something. There is a general agreement about where we want to go, but as I have said in other places, there is disagreement about how to get there.

I believe that Bill C-34 should be passed. I believe that it should be in a bill, but I believe the bill needs to be modified so as to ensure that the executive, by whatever name it is called, does not select or appoint the Senate ethics officer. This person will not be appointed just for this Senate or for those of us who are presently here, or just for the present or the next Prime Minister, or for that party, but for all time, one assumes. If a Prime Minister can appoint, and has the authority and the power to appoint notwithstanding — and I understand that we have a sort of veto in that respect — but when it comes those questions, as we have often seen, the government quite rightly exercises a significant amount of suasion.

When the Prime Minister can appoint, the Prime Minister can also point, and the person that the Prime Minister will be appointing, whoever he or she might be, will be someone who will be our confidante, a person to whom we, perhaps, will make our innermost secrets known, and who will one day also be, according to the way even this bill is set out, in a sense an investigator of us. An admonition in that respect in a bill does not do any good. It is like a judge saying to a jury, "Ignore what you have just heard." A Senate ethics officer, having heard from us disclosures of things which we wish to disclose to him or her, cannot put those things, reasonably, out of his or her mind when he or she has been asked, directed or decides to conduct an investigation or whatever might happen under the terms of this bill.

• (1620)

It is my belief that the bill ought to proceed forward exactly as it is with the exception of amendments to proposed sections 20.1, 20.2(1) and (2), and 20.3. For all intents and purposes, those amendments substitute "the Senate" for "the Governor in Council." Proposed section 20.1, for example, would read, "The Senate shall...appoint a Senate Ethics Officer..."

The amendments immediately following that paragraph ought simply to reflect that fact. The Senate, rather than the executive or the Governor in Council, ought to appoint the ethics officer. If that happens, we will have a statute that will do all of the things the leader has said need to be done, and I agree with those. However, there will then be no question as to the direction of that officer.

The leader spoke about Mr. Marleau having said that he does not see much difference between this officer and us creating a new Senate committee and hiring a clerk, but there is a difference. When we create a new Senate committee, we do hire a clerk. "We" hire a clerk by means of the actions of this house, in and of itself. It is not the same thing.

It is true, also, that every one of us is appointed by Governor in Council, as are the Speaker and the leader and the deputy leader and the clerks. However, there is a long understanding and convention that, once done, we are at — to use the old expression — arm's length, to a degree. However, an ethics commissioner, counsellor or officer appointed by, for all intents and purposes, the Prime Minister and subject to reappointment by the Prime Minister is subject to a degree of direction, I believe, by the Prime Minister that simply does not exist — I hope it does not exist — otherwise in this house.

There is a much more mundane amendment, honourable senators, that I believe must be made in this bill. I say this only to prove, I suppose, that I have read the entire bill. I refer to proposed section 72.08 on page 8 of the bill. I ask honourable senators to imagine what our reaction would be if one of the first three clauses of the bill said that a member of the House of Commons might bring to the attention of the Senate ethics commissioner a view that something needed to be investigated; yet that is exactly what proposed section 72.08 says about matters in the other place. That is not fair. What is sauce for the goose is sauce for the gander. I believe that proposed section 72.08 ought to be amended by removing the words "the Senate" in the first line. They are inappropriate.

By way of housekeeping, in that same proposed section 72.08, there is an error, only in English, that needs to be corrected. The third-last line now reads "the Prime Minister for public holders office." I am sure that means "holders of office" or "office holders." That phrase ought to be corrected.

Senator Carstairs: Would the honourable senator accept a question?

Senator Banks: Of course.

Senator Carstairs: Honourable senators, proposed section 20.5 states:

(1) The Senate Ethics Officer shall perform the duties and functions assigned by the Senate for governing the conduct of members of the Senate when carrying out the duties and functions of their office as members of Senate.

(2) The duties and functions of the Senate Ethics Officer are carried out within the institution of the Senate. The Senate Ethics Officer enjoys the privileges and immunities of the Senate and its members when carrying out those duties and functions.

Why does the honourable senator feel that the Prime Minister would have any authority over this particular individual —

Senator Nolin: Salary, remuneration.

Senator Carstairs: — when the legislation clearly gives all authority for that individual to this very chamber?

Senator Banks: Senator Carstairs is right, of course, in that the parameters for the nature of investigations — to use the colloquial term — are set out in this bill. I believe they are right. However, that does not address the question of whether or when, necessarily, a person might be asked to do something with the right whisper in the right ear.

Please understand that I am not ascribing any ulterior motives to this or any subsequent prime minister. I have the highest regard for this Prime Minister, and I know he would never do such a thing. However, my point was not that the Prime Minister would have anything to do with determining the rules under and by which the Senate ethics officer would conduct an investigation. There is a considerable hammer that could be seen to be held by the Governor in Council — for all intents and purposes, though, the Prime Minister — who will in the end determine whether the person will be reappointed. If a suggestion is made by the Prime Minister in that circumstance — for some motive which I do not ascribe to any existing or future prime minister — that would carry a lot of weight. It would carry less weight, I believe, than if one of us were to suggest to an officer who was selected and acclaimed by this house to do the same thing. No one senator could make a determination as to whether that officer would be reappointed. I was not talking about the rules. I was talking about "wink-wink, nudge-nudge."

Senator Carstairs: Honourable senators, if and when that person is to be reappointed, it can only be done by a resolution of this chamber. If there were to be a "wink-wink, nudge-nudge," it would have to be by members of this chamber, not by the Prime Minister, in order to get the support that the individual presumably wants.

Could the honourable senator also answer whether he thinks other officers of Parliament — the Auditor General, for example — are subject to the same "wink-wink, nudge-nudge"?

Senator Banks: The Auditor General surely is not. However, this bill says that "The Governor in Council shall, by commission under the Great Seal, appoint," and then it goes on to modify that in some way.

My point is that if the reappointment of such a person arose, notwithstanding that the members of this place might want him or her to be reappointed, the Governor in Council could decline to make such a reappointment.

Hon. Francis William Mahovlich: Honourable senators, if this particular bill had passed last year and the ethics commissioner was in place, would the Privacy Commissioner have committed the sins he committed?

Senator Banks: I am not competent to answer that question. I suspect that it would not have made any difference. I am not inside Mr. Radwanski's mind and never have been, so I do not know.

Senator Mahovlich: We cannot legislate morals.

Hon. Gerald J. Comeau: Honourable senators, we learned last week what can happen when a committee decides to act on its own and impose the will of the majority on a minority. As I understand it, our committee members were stuck on another committee. Therefore, the Rules Committee imposed the views of the majority side on our side. That is one angle.

• (1630)

If the Prime Minister appointed an ethics counsellor to uphold a set of rules which had been decided upon by a committee which had no minority input, we would then find ourselves in a situation where, for example, I would have to open my personal books, depending on the Rules Committee's decision, to this ethics counsellor. I would have to open my wife's books, depending on what the Rules Committee had decided.

Senator Carstairs: It would be based on the *Rules of the Senate*.

Senator Comeau: Just last week, the Rules Committee met and decided to impose its views on the minority. That happens. It is fine providing it is the majority side, but what would happen if there were a change of government and this side decided to start imposing its views?

Would we not be in a much better position — and, I think this is where the honourable senator is leading with his proposal — to have the ethics commissioner appointed by the Senate as the result of a joint decision between the leadership of the two sides so that we do not find ourselves in a situation where, as a minority member, I must open my books to a person that I may not trust because of this side had no input in the appointment of that person?

Senator Banks: Honourable senators, as I said earlier, I will abdicate the field with respect to the question of whether this ought to be rules-based or statute-based, because there are people here who are much better qualified to argue those points than I am. I will hide behind the same premise in answering the honourable senator's questions. I do not purport to have the faintest idea what the process might be down the road by which the Senate will determine the rules contemplated in this bill. I do not know enough about the committee system, or how it works, or how that would be done, except to say that it is my understanding that it is always the case that, as a general rule, the majority in this house — on whichever side it might sit or however that majority might be constituted from among both sides — will determine what those rules, as contemplated in this agreement, might be from time to time.

Senator Comeau: That is where my question was leading. The majority rules and, of course, at the end of the day we must accept that, if the majority decides to go in a certain direction, by all means that is the way we will go. We had an indication of that last week, when we pointed out that we had some problems with the date of a meeting because none of our members could attend, and the meeting went ahead anyway. The committee made its decision and reported to this house. That should have been a committee meeting that included the input of the minority. That input was never given.

Honourable senators, if we establish the kind of precedent that we established last week, then, trust me, the Liberals will not be in power. Eventually, there will be a change. Picture a day when the kind of actions we saw last week are taken by people on this side. The tables will be turned and then you will find yourselves in a position where you will have to start baring your souls, your personal finances and the finances of your spouse to someone in whom you have no trust or faith. This is the acid test that you must apply to this bill.

Senator Banks: Honourable senators, I have three points in response to that. First, what goes around comes around. Second, there are checks and balances because, notwithstanding what any committee might report to this house, it is the house that decides what happens in the end. Third — and I hope we all remember this — democracy does not consist simply in the rule of the majority; democracy consists in the rule of the majority taking great care to take into account the interests and needs of the minority in every respect. I hope we will always do that.

The Hon. the Speaker: I know Senators Cools and Grafstein have questions but, unfortunately, Senator Banks' time has expired.

Senator Banks: May I have leave, Your Honour?

The Hon. the Speaker: Senator Banks has requested leave to continue. Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Cools: I thank you for being willing to take the question, Senator Banks. As always, you bring exciting insights to debate. It is always a pleasure.

The proposed section 20.2(1) deals with the removal of this person. Many statutes in this country contain similar provisions for the removal of an office holder. However, we all know that no office holder has been removed by an address of this house or of the other House or of the two Houses together in at least 100 years, if ever. When we see those magical words, "by address", it means that the office holder cannot be removed. Does Senator Banks have any insights on that? For example, our Clerk of the Senate, who is sitting at the Table, is removable at pleasure, as are most such appointments. That also applies to the Clerk of the House of Commons and the ministers. Many office holders are removable at pleasure.

Has Senator Banks any insight into the drafting of this particular clause? For example, removing one of our own Table officers, even at pleasure, is a difficult proposition. Removing them by address is bordering on the impossible and that would have been the intention of the drafters of this bill. They know these rules far better than I. This clause is drafted in the most peculiar way. It states that an office holder may be removed, but there must be cause. Usually, if it is behaviour related, the removal is for whatever reason. An appointment is made "during good behaviour;" bad behaviour is whatever the chamber will say it is. They have qualified the removal. They have qualified the phrase "during good behaviour" to include "for cause", which is a little unusual. They have then qualified it by adding that the address is not to Her Majesty or to the Governor General; it is to

the Governor in Council. Honourable senators should really look at it. It is most peculiar and defeating of the Senate's interests.

Does Senator Banks have any insights?

Senator Banks: No, honourable senators, not in the context of this kind of employment. If this were an employment contract, honourable senator, outside of this place, I would have a great deal of experience on this subject, but certainly not as the drafter. I only say that, based on the limited knowledge that I have in that respect, I would prefer "for cause" rather than "at pleasure".

Senator Cools: Yes, but "at pleasure" is the condition of most appointments. For example, many ambassadors are appointed at pleasure. "At pleasure" is a common way to proceed. All ministers are appointed "at pleasure". There are many appointments at pleasure.

"During good behaviour" was the terminology that came out of the development of the relationship between the courts and Parliament. Judges were being appointed during good behaviour, subject to an address of both Houses. It is a hybrid but, undoubtedly, the term "for cause" is employment law terminology. It is not Her Majesty's appointments' law terminology but it definitely relates to employment. It is the mixture that is troubling. The real essence of my concern is that removing any office holder by address is so rare that I know of no situation where that has happened. I know of some who started, like in the instance of Judge Landreville, and I believe the Bank of Canada and Governor Coyne, but they did not get very far. Therefore, there are no concrete examples for us to point to in our history. I can tell honourable senators that all the chambers across the country have had to remove — rarely, granted — clerks or officers of the House for some reason or another. Usually it is done subtly, but my question to you —

You should try going on; it might be good for you. Yes, it is good. Get on this ground; it is exciting ground. I was encouraging the honourable senator to get up and speak.

• (1640)

Senator Watt: Come on.

Senator Cools: We can talk to each other. There is nothing out of order with that.

I was wondering whether the honourable senator has wrapped his mind around it or is prepared to wrap his mind around it. I was not a member of the committee, but perhaps someone canvassed addresses in the committee, maybe someone asked as to how many times office-holders have been removed by addresses. I do not know of any, and I think it is next to impossible.

Senator Banks: I am sure the honourable senator is right.

Hon. Jeremiah S. Grafstein: I want to refer the senator to his suggestion that members of the Senate have no place, on unreasonable grounds, suggesting that an office-holder other than the office-holder in this place be challenged. That appears to me to be inconsistent with our report, where we concluded that we should keep the matters separate and distinct from the other place. This seems to be an override. Is that the nature of the honourable senator's comment?

Senator Banks: Yes. The simplest answer would be that what is sauce for the goose is sauce for the gander. If we are to separate the two parts of this bill without actually cleaving them apart, then we ought to be consistent and ensure that there are no intrusions into the Senate's business in the first part of this bill and that we ought not to intrude into the business of the other place in the second part of the bill.

Senator Grafstein: I see a deeper problem that the honourable senator has raised because I looked at proposed section 72.08 more carefully as a result of his comments. It says that a member of the Senate can, on reasonable grounds, write to the commissioner in the other place that an office-holder has not observed ethical principles, rules and obligations — ethical principles set out by the Prime Minister.

What is the difference, therefore, between ethical principles and ethical rules? Can one have certainty in ethical principles sufficient to displace a public office-holder?

Senator Banks: Again, the honourable senator has asked a question that I am not really competent to answer except to refer to Senator Mahovlich's point and question, which was — and I think this is what my honourable friend is getting at — that it is not possible to legislate good behaviour. It is only possible to legislate sanctions against it or punishment that results from it. I believe that is the point here.

This section deals with and has been dealt with by the House of Commons alone. We ought not to intrude in it, even if we think the wording "ethical principles" is wrong, or attempt to change it because that is their business. Our business — and I think this is the point of many honourable senators — is our business and their business, in the other place, is their business. However, I do think we should remove ourselves from that paragraph.

Senator Cools: Honourable senators, if we were to look at proposed section 20.4(7), we would discover that this new office-holder would obviously have a car, perhaps many staff members, and quite a budget. I looked through the bill trying to discover how the estimates and proposals for funding would be determined. Honourable senators will notice proposed subsections 7 and 8 state that the Senate ethics officer shall prepare an estimate of the amounts that would be required for the next fiscal year. Estimates from every Senate committee are well examined by our Internal Economy Committee. However, these

estimates will not go through such a process, which is quite unique.

Proposed subsection 8 states that the estimates referred to shall be considered by the Speaker of the Senate and then will be transmitted to the President of the Treasury Board. I wonder if Senator Banks, since he was a member of the National Finance Committee, has wrapped his mind about the business of control of the public purse in respect of this officer's spending. Remember Radwanski.

Senator Banks: Honourable senators, with respect to remembering Radwanski, I think once burned, twice shy. We have touched that hot stove or the wet paint on that fence, and I think we will be well informed by it. However, with respect to proposed subsection 20.4(8), I have looked at it. I think it is right that the budget be submitted to the Speaker and then as a separate item to the House of Commons for examination. If the budget were to be submitted to a committee of this house, in the normal sense of the word, absolute justice would not then be seen to be done, and there could be an inference that might otherwise not be the case. Therefore, I would prefer, only in this case and only in these matters, that the budget of that officer be submitted to the Speaker of the Senate and then to the House of Commons, rather than to any committee of the Senate, in order to make it clear that no committee of the Senate is being subsumed by that consideration.

Senator Cools: I have no problem with it being submitted to the Speaker or to anyone to actually deliver it to the President of the Treasury Board. The question I am trying to get at is how will limits to that office's spending be set?

Senator Banks: By the same procedure and means by which all of our spending is clearly curbed.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I wish to participate in the debate at third reading and will abbreviate my remarks given the heavy schedule of business that still lies before us.

As I reflected upon the bill and read the debates again at second reading and the proceedings in committee, on balance it became clear that, as Senator Carstairs has indicated, there has been a movement in other assemblies — not only across Canada but also around the world, particularly in the Westminster Parliament — to have some kind of an ethics regime. Therefore, in principle I have no difficulty. It is probably one of those things that in the year 2003 one finds being set in place. We have something similar in the provincial jurisdiction of my home province.

Honourable senators, I ask this question: Should we have this model? The answer, on balance, probably is in the affirmative. However, Senator Carstairs pointed out the long history of work in trying to identify the models to be brought into place. I listened to her.

• (1650)

The most important consideration for us would be that we get it right. Given the world that we live in, there is no question but that we need this kind of mechanism, apparently, in the world of the 21st century, but is it the right model?

I then began to ask myself the question about this model. If it is not a model with which all honourable senators are comfortable, what good would be achieved in forcing through a regime that all honourable senators, or a vast majority of them, have not embraced? We all have had experience in other situations or circumstances of trying to impose a regime that, in a sense, is trying to facilitate self-regulation. Such regimes are not successful. Therefore, it seems to me that our principal concern should be to come up with a model that would have near-unanimous support. You will never be able to force a system that speaks to conduct on people who do not like that system. It seems to me that it is incumbent upon us to spend our effort in identifying the model that we are prepared to work with and to make it work.

Honourable senators, with respect to the term "ethics" that is employed, the first question that should present itself when we talk about "ethics" or "ethics commissioner" or "ethics officer" is what we mean by ethics. Any definitions, from early Greek moral philosophy through Aristotle's ethics or Nicomachean ethics or the ethical treatises through the Middle Ages, through scholasticism and down through the ages in the history of ideas, have one thing in common: they seek to identify the norm of ethics. Clearly, honourable senators, we have to ask the question: What is this norm of ethical conduct against which our behaviour is to be measured?

I heard some honourable senators say during the debates, "Well, maybe we have the cart before the horse. Maybe what we should have established first is not a regime but rather the norm of ethics, the criterion against which behaviour will be measured." I also heard some senators say during the debates, "Well, you know, it is not that we have been without some norms of conduct."

Therefore, I went through our rule book, and lo and behold, I quickly found at least two very important rules. The first is rule 94(1), which reads as follows:

A Senator who has any pecuniary interest whatsoever, not held in common with the rest of the Canadian subjects of the Crown, in the matter referred to any select committee, shall not sit on such committee and any question arising in the committee relating to that pecuniary interest may be determined by the committee, subject to an appeal to the Senate.

That is one normative element that we find right in our rules.

Also relating to the same issue of pecuniary interest, rule 65(4) provides the following:

[Senator Kinsella]

A Senator is not entitled to vote on any question in which the Senator has pecuniary interest not available to the general public. The vote of any Senator so interested shall be disallowed.

Those are two ethical, normative propositions that are there as a standard, a norm against which the conduct of senators can be measured.

I also heard in the debate that the work to articulate an ethical standard or an ethical norm is something that could be addressed in a reasonable period of time and is not beyond our reach. It seems to me that the best way of assessing whether this particular model or machinery is appropriate is to ascertain what that machinery is measured against, or what that machinery is to manage, or will be called upon to enforce, if you want to use that terminology.

In any assessment of ethical conduct, as measured against the ethical norm, certain determinants of ethical conduct are identifiable. We speak of the end of the agent, the end of the act and of the ethical circumstances. I find nothing in the bill to give guidance to the machinery to help it measure the ethical conduct, let alone how one would measure without having the norm to begin with.

There is a flaw, but it is one that is not beyond our ability to fix. We, Parliament and the people of Canada, ultimately, would be far better served if we got this thing right rather than simply putting in place a system for some public perception reason.

I do not think I have heard anyone say that the principle of a regime was somehow unacceptable. It does seem to me, honourable senators, that we have to try to find a model — and with some adjustments to this bill, we can do that — that will be embraced enthusiastically by all members of this place, because, after all, it is to help honourable senators do their work in the public interest of the country in a manner that meets the highest standard that we would set for ourselves. Little is to be gained, I suggest, honourable senators, by coming up with a system that a few want and would use the force of numbers to impose. Unless a large percentage of senators embrace this model, it will be a failure.

I think that we are close to coming up with a system that can work. We must have the code developed, and we must have a model that will be embraced, supported and made to grow by the enthusiastic support of all senators. At this juncture, it is not quite there, but it is within our grasp and we should use our creativity, goodwill and sense of compromise to do the right thing and get this one right.

• (1700)

Hon. John G. Bryden: Honourable senators, this will not be a philosophical question. Does the honourable senator have the bill before him?

Senator Kinsella: I do not.

Senator Bryden: I know the honourable senator probably knows it by heart. I will read part of clause 2 for the information of honourable senators. It refers to the proposed section 20.1 in the bill before us.

Senator Kinsella: What page?

Senator Bryden: Page 1.

In any case, it deals with the Senate ethics officer, and it states:

The Governor in Council shall, by commission under the Great Seal, appoint a Senate Ethics Officer after consultation with the leader of every recognized party in the Senate and after approval of the appointment by resolution of the Senate.

My question to the honourable senator and to the world at large is: What happens if the Senate does not pass a resolution approving the appointment?

Senator Kinsella: In response to the honourable senator, if that paragraph were written a little differently, to say that "after consultation with and the agreement of the leader of every recognized party," that problem would be completely obviated. If the leaders of all of the recognized parties reach an agreement, they will be speaking for their respective caucuses, and the adoption by the house, I suggest, would be guaranteed.

Importantly, consultation and agreement with the leaders speaks to the groupings of individual senators. Therefore, to make this work — and even, indeed, if we want this to work — it must have the support of the senators. If it is left as it is, chances are it could very well happen that it would not be approved by the Senate. That does not get us very far.

I am arguing that there must be a system that honourable senators can make work. That is one point that should be considered. We should include the words, "with the approval of those leaders."

Senator Bryden: Perhaps I could make one comment in relation to that. An old Scotsman in Scotland was ploughing his field. I walked over to talk to him and he told me that he got paid for doing that. I said, "How do you get paid — by the acre or by subsidy from the government?" He answered, "No, no, by the hour." I asked, "How much do you make?" He then replied, "You can take a long time to plough a field if you put your mind to it."

We can take a long time to pass a resolution in this house if we put our minds to it. It may very well be the case that we could go a

long time under this provision without an appointment being made, because — to go back to my arbitration days — there is no decision maker here.

Senator Nolin: What about closure?

Senator Bryden: Unless it is the Governor in Council — I do not see any override provision so that, after certain length of time something will happen automatically.

Senator Kinsella: I think Senator Bryden's question is an important one. We should all draw on his immense experience in labour relations. I am sure that the honourable senator would agree with us, and indeed instruct us, that the best labour relations environment is that environment in which the parties work very hard to make it work — where a sense of conciliation, compromise and understanding are brought to bear.

As Senator Bryden knows better than anyone else, at the end of the day, you must reach the collective agreement at the negotiating round. One side or the other can win all of the arbitration cases, but you would have an ineffective, unproductive work environment if the parties to the collective agreement are not rowing in the same direction.

It is important to have a provision that allows for consultation and conciliation with the leaders of the respective parties so that they agree on a nominee. That nominee can then be brought forward to the Senate and we would not be faced with this long, drawn-out process.

The idea is to try to have a system that we can make work. We are not trying to come up with a system that everybody can get around.

Senator Grafstein: I would bring to the honourable senator's attention the proposed section 20.2(2), which I think answers Senator Bryden's question on the proposed legislation. It states that:

In the event of the absence or incapacity of the Senate Ethics Officer, or if that office is vacant, the Governor in Council may appoint a qualified person to hold that office in the interim for a term of up to six months.

As presently drafted, the bill contemplates that the Prime Minister has the ability to make an appointment, if there were a deadlock in the Senate, which is possible, for an interim period of six months.

Does Senator Kinsella agree with that?

Senator Kinsella: Yes.

On motion of Senator Moore, for Senator Furey, debate adjourned.

BILL RESPECTING THE EFFECTIVE DATE OF THE REPRESENTATION ORDER OF 2003

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Smith, P.C., seconded by the Honourable Senator Léger, for the second reading of Bill C-49, respecting the effective date of the representation order of 2003.

Hon. Consiglio Di Nino: Honourable senators, I wish to take a few moments to give my perspective on Bill C-49.

Honourable senators, this bill is the latest example of this government's disrespect for our democratic system. As the saying goes, absolute power corrupts absolutely. That seems to be what this government is practising. We in this chamber are now witnessing one of the worst examples of this by this government's handling of Bill C-34.

Honourable senators, for me, Bill C-49 is a blatant example of a government with a large majority pushing its own agenda for crass political purposes. This bill is about manipulating the system to benefit the electoral career of the incoming Prime Minister.

Honourable senators, we have an independent election commission for a reason. It is so that we can have an unbiased, non-partisan arbitrator of our election process. Those commissioners have done their job. They have recognized the fact that Ontario, B.C. and Alberta should have more seats, in accordance with our laws and rules. The effective date to increase these provinces' representatives in the House of Commons is August 25, 2004. That is set. That is a fact. On that date, seven more seats will be distributed to those provinces.

• (1710)

I applaud the commission for an open and effective process because it works. Now we are being asked to change the effective date for no other reason than to suit a political purpose. We are being asked to subvert the system, and not for the first time. The Prime Minister in waiting is urging the electoral boundaries commission and both Houses of Parliament to change the system for a partisan benefit. This is reprehensible. This is an example of tyranny of the majority, plain and simple, and tyranny of the majority is the bastardization of a healthy democracy. We know that the Liberals have a large majority both here and in the other place — we can count — but that is no excuse for them to do whatever they want. There needs to be some restraint and there needs to be respect for the integrity of our system.

Senator Lynch-Staunton, in his address to this chamber on Bill C-49, reminded us that, in 1995, this same Liberal government introduced Bill C-69, legislation intended to delay redistribution, once again for self-serving political purposes. We call that gerrymandering. As Senator Lynch-Staunton recounted

in speaking to the proposed legislation, Mr. Sarkis Assadourian, a loud proponent of Bill C-69 and a member of the other place, said, in part:

I worked twenty years to get here. Within two months I lost my seat, which is not fair.

My response to this, on November 21, 1995 in this chamber, was:

If we succumb to the Chrétien government's pressure to pass this bill, we can then immortalize Mr. Assadourian, and Canada will have its own term when referring to future manipulations of electoral boundaries. The term will be "sarkising."

Perhaps today we should change the term to "martinizing." Senator Lynch-Staunton's speech on this bill should be mandatory reading for all of us. He eloquently placed on the record the reasons that all of us should be concerned about this bill.

The bill is symptomatic of this entire legislative session. We are working overtime to ram through bills that could have been introduced months or even years ago — some were promised in 1993. Instead, they are being jammed through in one session and we are being asked to deal with it all in an abbreviated session, at least we think so. No one has had the courtesy to tell us directly. Rather than act as a chamber of sober second thought, we are being asked to act as a chamber of rapid rubber-stamping. We are collectively abdicating our responsibility to safeguard and protect democracy, and we should put a stop to this, regardless of which team we play for.

Honourable senators, there is not much we can do to influence what goes on in the other place but we can certainly do our part in respecting our laws, our rules and our traditions. Anything less would further erode public confidence in our institutions, in our leaders and in our cherished democracy.

Hon. Marjory LeBreton: Honourable senators, I rise to speak to Bill C-49, in respect of the effective date of the representation order of 2003. The representation order of August 25, 2003, by Order in Council, proclaimed that the new electoral boundaries would come into effect one year hence, in August of 2004. That would allow time for Elections Canada to have in place the technology, the maps, the enumeration officers and the returning officers required to conduct a fair election. This made eminent sense, and makes eminent sense.

The last federal election was in November 2000. August 2004 would still be more than a full year before an election was required to be called. Indeed, these boundaries would be in place a full three months before the fourth anniversary of the election of the present government. What happened to cause this law to be interfered with? An *Ottawa Citizen* story on July 18, 2003 tells us what happened. It was reported that Mr. Kingsley, our Chief Electoral Officer, was closely monitoring the media following the musings of one Paul Martin, incoming Liberal leader. It reported:

In particular, he —

— Kingsley —

— said a June National Post story revealing that Mr. Martin, during a private meeting with some 30 Senators, indicated he wanted to be ready to call an early election in the spring of 2004 spurred him to examine the matter further with a view to fast-forwarding expansion plans.

However, Mr. Kingsley conceded that he had also received a June phone call from Elly Alboim, a top Martin leadership campaign strategist and principal at Earncliffe Research and Communications, asking about the potential of moving forward on the redistribution of election boundaries, which would yield seven new members of Parliament — four from Western Canada and three from Ontario — faster than current legislation provides.

Very inappropriately, this Officer of Parliament, Mr. Kingsley, in response to these media musings by the Member of Parliament for LaSalle-Emard, takes it upon himself to write to Mr. Peter Adams, Chair of the Standing Committee on Procedure and House Affairs in the other place. Mr. Kingsley correctly noted in his letter of June 16, 2003 that the time frame for the new boundaries to come into effect as provided for under the Electoral Boundaries Redistribution Act is one year from the date of the proclamation of the representation order. He helpfully added that in order to change the time frame, a legislative change would be required.

In his letter to Mr. Adams, the Chief Electoral Officer pointed out that the electoral district boundaries are fundamental to election administration, and changes impact on almost every aspect of an election. Mr. Kingsley said:

A very important condition concerns the timely appointment of returning officers for the 308 electoral districts. Every electoral district that has boundary changes will require an appointment. In order to implement the new boundaries by April 1, 2004, the appointment of the returning officers needs to be completed by mid-September 2003. Returning officers require extensive training to perform their duties during an election, as well as to become familiar with their electoral district and to perform a number of pre-writ tasks in preparation for an election.

Here we are, honourable senators, in November of 2003. Last week in the House of Commons, the Government House Leader confirmed that all 308 returning officers required for an early election have not yet been appointed. The point raised by the Chief Electoral Officer, that the appointment of returning officers needed to be completed by mid-September 2003 in order to make an early election work, is a valid one, even from the ever-helpful Mr. Kingsley. Will Elections Canada have the time to prepare

returning officers and perform the pre-writ tasks that are required to be done? This is a question that we need to fully explore during the committee examination of this bill.

Honourable senators, raising questions and concerns about this advancement of the new boundaries does not mean that we question the fairness of Alberta, British Columbia and Ontario gaining additional seats. This has already been done by the representation order on August 25, 2003. This is done and it is on the books. We fully endorse these new ridings, which will give Alberta, British Columbia and Ontario more seats to reflect their growing populations. What is being questioned, honourable senators, is why Parliament sets up a process that is supposed to be removed from politicians and the government, then abandons it when it is electorally advantageous to do so.

Honourable senators, Senator Lynch-Staunton and Senator Stratton have spoken about previous efforts to interfere with electoral boundaries. Senator Stratton said yesterday that this is a very disconcerting trend "which seems to say that the riding boundary redistribution process is just another instrument of the federal government to be manipulated at the convenience of the government of the day."

Let us remember, honourable senators, that redistribution is required by both the Constitution and section 3 of Canada's Charter of Rights and Freedoms. The Electoral Boundaries Readjustment Act is the legislative mechanism that drives this process. Basically, every 10 years more seats are added to provinces that have grown significantly in population, and a redrawing of riding maps to reflect population shifts within the provinces takes place. This process is driven by provincially-based federal electoral boundaries commissions, which are responsible for holding public hearings. The commissions can accept written submissions from the public over the course of their deliberations.

• (1720)

These commissions are chaired by a judge appointed by the Chief Justice of each province and also include two residents of each province, appointed by the Speaker of the House of Commons. Members of the House of Commons can also get further input through an objections process coordinated by a parliamentary committee, but the main decisions on redistribution of federal riding boundaries are the responsibility of the commission. My colleagues on the other side should remember that it was their own Lester Pearson who introduced this change, so that there would not be this gerrymandering. How quickly they forget.

Although the commissions must adhere to a number of criteria in making their decisions, including the advancing of the principles of proportionate and effective representation, the process is theoretically supposed to be non-partisan and not driven by the electoral considerations of the government of the day.

Unfortunately, the extent to which each of these principles has been advanced by this Martin-Chrétien government has not been overwhelming.

For instance, some honourable senators may remember that, after the 1993 election the Chrétien government attempted to bring in Bill C-18, which was essentially an attempt to stall the electoral boundary redistribution process. The bill quickly passed through the House of Commons, but Progressive Conservative members on the Standing Senate Committee on Legal and Constitutional Affairs successfully exposed the serious ramifications of the bill. At issue was making sure that a redrawing of Canada's riding maps reflected the population growth and shifts, and that redistribution would be done in time for the next election, which subsequently occurred in 1997. At that time, it was widely reported that the genesis for Bill C-18 was unhappiness in the Liberal caucus, as my colleague Senator Di Nino just said, over proposed new riding boundaries.

By the end of committee hearings, public opinion was shifting against this arbitrary action of a government that was trying to push through Bill C-18. Helpful in this regard was the opposition expressed at the time by the provincial governments of Ontario and British Columbia, whose provinces stood to lose additional MPs allotted to them should the redistribution process be suspended.

As many honourable senators will recall, faced with mounting opposition and amendments to their legislation, the Martin-Chrétien Liberals were forced to offer a compromise solution. The redistribution process would be suspended for a shorter period than originally called for. This compromise ensured redistribution would be done before the next federal vote, but also allowed the government an opportunity to examine a new regime for readjusting boundaries.

Unfortunately the government's next attempt at electoral boundaries reform, Bill C-69, was just as ethically bankrupt as their first attempt.

As with Bill C-18, with Bill C-69 the Standing Senate Committee on Legal and Constitutional Affairs was called upon once again to expose the Liberal government's attack on one of Canada's democratic principles. After thorough hearings, the committee reported the bill with several amendments that were adopted by the Senate and referred back to the House of Commons. The Commons did not approve the Senate's proposals and sent the bill back to this place.

At this point, the calendar was beginning to be a factor, as the suspension of the then-current redistribution process set out in Bill C-18 was due to end in days. Following some procedural wrangling, the bill and the message from the House of Commons were referred back to the Legal Committee for further study. By this time, the redistribution process had restarted and it became even more apparent that the government's continued insistence on the passage of Bill C-69 was to prevent new boundaries

from coming into force. As with Bill C-18, Progressive Conservative senators would not budge in their opposition to Bill C-69. Bill C-69 died on the floor of the Legal Committee when Parliament prorogued in February of 1996.

Today, honourable senators, we are witnessing another manipulation of the electoral boundary process. The question is why does the incoming leader of the Liberal Party feel that he has to advance the election? What is so pressing and urgent that he feels he needs a mandate by next April? Why does he want the ability to go to the Canadian people just three and a half years into the Liberal mandate? Is he afraid to govern following Mr. Chrétien's retirement?

Honourable senators, there is a process in place for electoral boundaries readjustment. It is to promote equality of representation and the integrity of the vote. Parliamentarians should not be put under the gun to pass legislation that, in effect, is gerrymandering because they fear they will be accused of refusing new seats in fast-growing areas, which of course is not true.

We are seeing, with Bill C-49, a crass manipulation of a system that is supposed to be non-partisan. Shame on those of us who advocate this, and shame on all of us who support this tampering with our laws by writing new laws to get around existing laws.

On motion of Senator Nolin, debate adjourned.

APPROPRIATION BILL NO. 3, 2003-04

SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Day, seconded by the Honourable Senator Léger, for the second reading of Bill C-55, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004.

An Honourable Senator: Question!

The Hon. the Speaker: Is it your pleasure, honourable senators to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

The Hon. the Speaker: When shall the bill be read a third time?

On motion of Senator Day, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

LIBRARY AND ARCHIVES OF CANADA BILL

SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C., for the second reading of Bill C-36, to establish the Library and Archives of Canada, to amend the Copyright Act and to amend certain Acts in consequence.

Hon. David Tkachuk: Honourable senators, I wish to make a few remarks on Bill C-36. In fact, I have about 16 pages of them.

The bill, in principle, seeks to create the Library and Archives of Canada Agency, according to the Department of Canadian Heritage press release of May 8, 2003.

The reason I refer to it in that way is that, in the government's press release of May, there is no mention of the significant amendments being made to the Copyright Act at the same time. Apparently, this newly created agency is in response to a Throne speech commitment. However, there was no mention throughout the body of the press release about the subject of the changes being made to the Copyright Act. Much like Bill C-10, where the government dropped in gun registration amendments on top of animal cruelty legislation, they have dumped copyright amendments on top of an act to create a new agency of the Library and the Archives of Canada.

I am not alone in thinking that it is incongruous that amendments to the Copyright Act are being attached to a bill that creates a new agency. In order to prepare myself, I have familiarized myself with some of the debates of the other place. It seems, at one time, that a bipartisan deal had been reached, which had been proposed by a Canadian Alliance member — our new cousins — to remove Clause 21 from this bill. The Canadian Heritage Committee agreed to do that. Even Ms. Carole-Marie Allard, Parliamentary Secretary to the Minister of Canadian Heritage, committed to removing clauses 21 to 22 pertaining to the Copyright Act at a House committee meeting in June of 2003. Strangely, another meeting was called on short notice once Parliament was recessed, with mostly members from the government side, who ensured those clauses were reinstated and part of Bill C-36.

Further, those members from the government side who did vote on Bill C-36, were not the same members who had been part of the previous hearings on the bill nor, coincidentally, were they part of the arrangement.

At issue is clause 21, which is known as the "Lucy Maud Montgomery clause," for the author of *Anne of Green Gables* and many other published works. Her estate also includes several unpublished works, and clause 21 provides for an extension of the time limit on the copyright protection afforded these works by at least another 14 to 34 years, but only for those authors who died between January 1, 1930 and January 1, 1949. Lucy died in 1942.

• (1730)

Clause 21 was intended to rectify the amendments to the Copyright Act passed in 1997. At that time, unpublished works were brought into line with published works — that fifty years after the death of the author, copyright would expire. Formerly, unpublished works had been given copyright in perpetuity.

The estate that lobbied so hard for that clause was that of L.M. Montgomery, a pretty powerful estate, I would say, since their power is demonstrated by the fact that they have been able to have this clause dropped into a piece of legislation that has little to do with copyright except for consequential amendments.

At first and second reading of Bill C-36, clause 21 originally said that copyright protection on her unpublished works would last until 2017 — that is, from 1942 until the changes made in 1997 equals 55 years, plus another 20 years for lobbying so loudly. In fact, Lucy's estate is the big winner, gaining more years to hold back unpublished works than an author who died in 1950.

The problem with this legislation is that it is piecemeal legislation. Any time you cater to one specific group, you are bound to upset another. The estates of authors who died before 1949 were given a five-year extension in 1997 to find publishers. That made sense because the estates of those who died previous to that legislation taking effect needed five years to get their estate in order to see if they could sell their works, give them away or whatever the estate decided to do. This was an exception that those who died after 1949 did not receive.

Dare I suggest that precedents being set here actually set the stage for amending this legislation again in a few years, possibly at the five-year statutory review of the Copyright Act, and further extending the protection. We cannot afford to legislate in this way nor set these kinds of precedents since we are governed by the rule of law.

Since the uproar caused by the insertion of clause 21 in Bill C-36, the deal, the subsequent takeover and bad-faith vote in committee, the subsequent motions that were lost at report stage and the voluminous debates that exist for all to read in Hansard, we have yet another instalment in this debate. On October 28, due to the mounting pressure within the Liberal caucus and the continuing excellent work of the opposition, the government finally acknowledged that it ought not be creating legislation for individuals. After all, there can be no "Dave Tkachuk bill of procedural attacks" or "Herb Sparrow legislation on unruly behaviour." None of us can be the sole subject of legislation. Thank God for that! At the same time, we must be very cautious when it is suggested that the legislation we are studying fits this description.

The problem is that by granting further extensions for the benefit of Ms. Montgomery's estate, we will be granting further copyright extensions to all dead authors who have posthumous unpublished works before the date of 1948, but after 1929, at the least a three-year extension.

Honourable senators, I have some questions. Where do the dates 1929 and 1948 come from? They sound arbitrary.

Second, who is benefiting and who would we be hindering? Obviously, the answer to that would provide some clues. I understand that illustrious Canadians such as Jack Granatstein, Wallace McLean and other distinguished academics, who take as their responsibility to characterize our Canadian history for the benefit and future of all Canadians, are very concerned about these ad hoc amendments.

I see this offending clause 21 as a form of shelter. It is a shelter designed for the benefit of a single estate in this country against all others, now and in the future, who really do have a right, once copyright has expired, to have access at no cost to these special materials.

Honourable senators, if the government has a policy, say a Red Book policy on special treatment of friends of the Liberal Party, then they should just say it. If they want to pass the bill for the benefit of a friend, then at least they should have the courage to stand up for what they believe in and have a bill designed for that individual.

Here — I can even assist in naming the bill. Why do we not move a Senate bill. We can call it Bill S-50, the Lucy Maud Montgomery Estate's Special Protection Bill. That "50" is for 50 years, automatically renewed at the end of every fiftieth year, in perpetuity.

The latest instalment in this debate was that yet another deal was offered and voted on at third reading in the other place. Some may see it as a compromise; others, a Sheila Copp-out.

I ask honourable senators if this is the best that can be done with the mess? The new deal amends clause 21 to assign a further three years of protection to the estates of authors who died between December 21, 1929, and January 1, 1949, which effectively means that Lucy's estate does not have to worry about their protection expiring this December 31, 2003, which is what the amendments of 1997 would have done. They have three more years to find a publisher. Instead of giving the estates another 14 years, to December 31, 2017, the compromise is to merely give them another three years, lasting until 2006.

The circumstances are different for estates of authors who died after January 1, 1949. This shows why we need committees to do a lot of work. I am reading this and I think I know it, but I am confused now.

The estates of authors who died in 1949 or later are protected until the end of 2048, whether the work is unpublished, performed or communicated in any way.

Senators, 50 years is a long time — just a bit less than my lifetime. Surely finding a publisher would have occurred some time within that period. Senators Leo Kolber found a publisher in a heartbeat when they heard that he would be unusually frank about the inner workings of the Liberal government.

Honourable senators, the amendments in 1997 changed the rules for those authors who had died before January 1, 1949. To try to be fair, a five-year transition period for any estates affected was instituted. I am not sure if any other estate expressed concern about needing more than 55 years to find a publisher for unpublished works, but I understand that only the Montgomery estate has made the case. I also understand that one other famous author, Steven Leacock, will benefit from the Montgomery lobbying.

The reality of Bill C-36 is that it is intended to protect unpublished works for a total of 50 years, period. Frankly, if an author passed away in 1948, that is 55 years ago. Unpublished works, even personal letters of historical importance, surely came to light a long time ago. The changes made in 1997 were a warning shot for estates to take "publishing" and profitable action within the next five years before their copyright expired. That seems so reasonable.

If Canadians thought or, worse, knew that we were making laws for the sole benefit of one individual or the estate of one individual in Canada, I do not think we would be here so comfortably.

My last argument against copyright clauses being included in Bill C-36 is one of logic. Last June, the House Standing Committee on Canadian Heritage announced that it would be conducting its mandated review of the Copyright Act with a deadline for completion of June 2004. Here are the windows for copyright legislation. Either significant changes to the Copyright Act should have been made in Bill C-48 last session, then Bill C-11 that passed in December, or any further changes should be made following the 2004 report of the House of Commons Canadian Heritage Committee. That would be an appropriate way to manage the responsibility of overseeing copyright legislation in this country. That would be one of the reasons Canadians entrust us to preserve their heritage and rights. That would be doing our job properly. It should not be that during review of the bill, we are reviewing the Copyright Act.

I will be putting these questions to the Minister of Canadian Heritage when, I assume, she will be before committee to defend her legislation.

An interesting and similar situation is the newly discovered unpublished papers of the late Ernest Hemingway that have been carefully guarded at his villa in Cuba or Lookout Farm. His fourth wife, Mary, in the two months after his suicide in 1961, made a quick trip to Cuba and took away 200 lbs of his papers. The rest must have been sitting there unviewed, used, or read by scholars.

• (1740)

Yet, as one English professor from Pennsylvania State University said:

These are materials that form a record of one of the longest and most formative periods of his life, and yet one of the least-known periods of his life. If that paper disintegrates, we've lost that part of Hemingway's life, the record of it.

Perhaps Montgomery was not a pack rat like Hemingway, but surely we, as Canadians, have a right to learn about one of our most famous authors from her unpublished works and papers, as much as we have learned from her published works.

I truly do not believe the government intended this to be true, but here we are, dealing with legislation that establishes an agency to protect records of importance to Canadian history and the nation itself, and ironically, at the very same moment, we are also preventing any Canadian public or scholarly institutions the benefit of access and rights to use what should rightly be public records.

In the case of Hemingway, the historical coming together of Cubans and Americans is, according to one of the stakeholders:

... is not commercial. This is based on working together to save something precious and very important.

Are the claims of the Montgomery estate not commercial?

If Hemingway had been a Canadian, if he had stayed in Canada and kept his job at the *Toronto Star* in the 1920s, his unpublished papers, which total as many 10,000 letters, as well as many volumes of potential manuscripts, would be publicly accessible in eight more years, since he died in 1961. In fact, the Hemingway estate is as anxious for the public preservation of these records as any would-be biographer or academic and is cooperating fully with authorities to catalogue the collected works.

My concluding comments will be on the rest of the substance of the bill and what it is intended to accomplish. The history of this bill, in fact, goes back four years, when the goal of establishing the Library and Archives of Canada was first initiated. There was no discussion at that time of changes to the Copyright Act because the Copyright Act had no place in this legislation.

In a 1999 report entitled *The Role of the National Archives of Canada and the National Library of Canada*, the vision —

The Hon. the Speaker: Senator Tkachuk, I am sorry, but your time has expired.

Senator Tkachuk: May I have leave to continue?

The Hon. the Speaker: Is leave granted? Senator Tkachuk is asking for leave for additional time to speak.

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I am prepared to allow him a few minutes more, because this is only the second speech on this matter.

[English]

Senator Tkachuk: Thank you. This stuff is so darned interesting. I did not think it would be when I first looked at the bill. Trust the Liberals to make bills like this interesting.

In a 1999 report entitled "The Role of the National Archives," the vision of a new agency was discussed, which would ensure that the National Library, which was established in 1953 to preserve Canada's rich publishing heritage, would be better able to fulfil its mandate of protecting important archives by working in partnership with the National Archives, which had been established much earlier, in 1872, to preserve the documents of a new nation, Canada. In addition, creating one agency would eliminate any duplication of services to Canadians.

The important work of the National Library and National Archives goes unsung, and I thought I would take this opportunity to state how much Canadians appreciate the collective memories that are so professionally maintained by our public servants employed at these two institutions. Perhaps working together under the roof of one agency will create a synergy that will be greater than the sum of the various parts and responsibilities. Creating one agency eliminates strange divisions of labour that exist today because of a piecemeal approach to legislation.

In closing, and along a similar theme I have spoken on in the past, I believe the government has mismanaged its responsibilities on copyright legislation in Canada. In summary, I would like to review the following points.

I think it is likely that Bill C-48 from the first session of the Thirty-seventh Parliament, which became Bill C-11 during this session, would have been a more logical place to make amendments to the Copyright Act, a bill that was just passed this year. Indeed, committee study of that bill would have ensured that the witnesses were all focused on one piece of legislation and could provide a clear direction for the framework of such legislation.

If we divide this bill, or send an instruction on how to deal with this bill, I believe the committee will be better equipped to properly deal with the new agency and copyright matters separately. In this way, we will not be holding up the creation of the new agency unnecessarily while, at the same time, we will be separating matters that have nothing to do with each other.

I also noted that the Standing House Committee on Canadian Heritage, according to an October 6 press release, will launch its statutory review immediately and report back no later than September 2004, an amendment to an earlier press release in June 2003 which announced it needed only until June 2004.

Honourable senators, the government has equivocated on clause 21, having made changes, deals, rescinding of deals and new deals. This tells us that there is something wrong in general with these provisions.

Finally, it is my duty as a parliamentarian to stand up against legislation that has no place here, legislation that is designed for the specific benefit of one individual or, in this case, one estate. Later on, I will ask you to join with me in this effort.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I would echo Senator Tkachuk's outlining of the bill and how reprehensible it is for the government to have contributed to the delay of the merging of two entities, the Archives and National Library, because they slipped in two completely unrelated clauses amending the Copyright Act which has absolutely nothing to do with the merger. Had these amendments not been in the bill, the merger would have gone through months ago. The merger was recommended by John English, who chaired a committee to study the issue. It was well received in committee. The staffs of both institutions are keen to get together. I am familiar with the archives in particular, for one or two special reasons, and I know how they feel about it. I am told that the National Library is also keen on the merger.

This move, however, is being held up because of these two amendments which have absolutely nothing to do with the merger the bill wants to do and which are controversial amendments and whose history is scandalous. As Senator Tkachuk has said, a deal which was struck was broken suddenly, and then the final amendments were tabled by the house leader in the House and passed unanimously without any debate or any opportunity for those directly concerned to debate them. I would hope that the committee will take that into consideration, recommend taking out the copyright clauses and come back with a clean bill which, on this side, we will look forward to passing with great enthusiasm.

Senator Tkachuk: Honourable senators, notwithstanding rule 58(1), I would ask leave of the Senate to return to Notices of Motions to enable me to move a motion.

The Hon. the Speaker: We are at second reading stage of this bill. We should dispose of that before we proceed with anything else.

Is the house ready for the question on second reading?

Hon. Senators: Question!

The Hon. the Speaker: I see no one rising. I will put the question.

[Senator Tkachuk]

Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

The Hon. the Speaker: When shall this bill be read the third time?

On motion of Senator Carstairs, bill referred to the Standing Senate Committee on Social Affairs, Science and Technology.

NOTICE OF MOTION FOR INSTRUCTION TO COMMITTEE

Hon. David Tkachuk: Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(f), I move:

That it be an instruction to the Standing Senate Committee on Social Affairs, Science and Technology, that it divide Bill C-36, an Act to establish the Library and Archives of Canada, to amend the Copyright Act, and to amend certain Acts in consequence, in order that it may deal separately with the provisions relating to the creation of the Library and Archives of Canada and the provisions relating to the Copyright Act.

The Hon. the Speaker: Is leave granted, honourable senators, for Senator Tkachuk to put his motion?

Senator Carstairs: No.

• (1750)

The Hon. the Speaker: Leave is not granted.

Is leave granted to revert to Notices of Motions?

Hon. Senators: Agreed.

Senator Tkachuk: Honourable senators, I give notice that I will move:

That it be an instruction to the Standing Senate Committee on Social Affairs, Science and Technology, that it divide Bill C-36, An Act to establish the Library and Archives of Canada, to amend the Copyright Act and to amend certain Acts in consequence, in order that it may deal separately with the provisions relating to the creation of the Library and Archives of Canada and the provisions relating to the Copyright Act.

ASSISTED HUMAN REPRODUCTION BILL

SECOND READING—DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Morin, seconded by the Honourable Senator Gauthier, for the second reading of Bill C-13, respecting assisted human reproduction.

Hon. Wilbert J. Keon: Honourable senators, I rise at second reading to speak to Bill C-13, respecting assisted human reproduction and related research. This is a most important, controversial and emotionally charged bill. The proponents, as equally as the opponents, speak about the issues with great knowledge and passion. Today, I speak to you, I hope, with objectivity in an attempt to have you focus on the extremely daunting task we have before us. Our thorough and informed assessment of this bill is crucial to our assignment and, consequently, to all Canadians.

I must first congratulate all involved for the enormous contribution of time and commitment provided to study this subject and to construct Bill C-13. To quote Senator Morin, this bill has had an extremely long gestational period.

In November of 1993, a royal commission chaired by Dr. Patricia Baird released, "Proceed with Care," the final report of the Royal Commission on Reproductive and Genetic Technologies.

Its mandate was extraordinarily broad to inquire into, evaluate and make recommendations about new reproductive technologies in terms of their social, legal, ethical, economic, research and health implications for women, men and children and for society as a whole.

The Baird report, as it became known, presented 293 recommendations, including prohibiting human cloning and creation of animal-human hybrids and commercial surrogacy, and recommending the establishment of an independent regulatory body to administer rules and regulations, provide licences and monitor relevant activities.

In the decade since the royal commission, there have been several failed attempts to provide legislation in this area. In 1995, the Minister of Health at that time introduced a voluntary moratorium on cloning and many other activities to which the royal commission had objected. Three years after the Baird report in June of 1996, the government introduced Bill C-47, which dealt only with prohibiting certain assisted reproductive activities such as sex selection.

That bill died on the Order Paper when, in 1997, the federal election was called. A further attempt at creating legislation was also unsuccessful when Bill C-247, which was mostly a ban on human cloning, failed on its second reading in 1999.

Bill C-56, to create an act respecting assisted human reproduction, was introduced as draft legislation in May 2001. The bill made it through first and second reading in the other place and was referred to the Standing Committee on Health. It died when Parliament was prorogued in September 2002. The bill now before us was first introduced in the last session of Parliament, in fact, on October 9, 2002.

Let us take a moment to appreciate the foremost importance of this bill to couples wishing to have children and needing the assistance of the technology in question. Consider a couple, both in their early 30s, happily married for two years, and infertile. Above the fact that knowing a woman will not be able to become pregnant, she may be overwhelmed with tremendous reactive depression, the inability to function, and relationship disharmony. Undergoing investigation and treatment precipitates an additional flurry of pain, anguish and uncertainty. Infertility threatens what for many are life-long dreams to give birth and raise a family. Couples going through in vitro fertilization are embarked on a roller coaster. They must go through interviews, testing, waiting for a donor, painful treatment, running up the costs, and waiting, waiting, waiting.

Infertility, considered by some as a medical disability, affects one in six Canadians of reproductive age. For an egg donor, the process generally looks like this: She must first go through extensive interviews, see a lawyer, and take a psychiatric evaluation; followed by painful injections into her leg every night for two weeks to raise the appropriate hormone level; visit the fertility clinic five to six times to ensure the hormone levels are correct; take numerous blood tests and have ultrasound monitoring to ensure egg development is progressing; then undergo the egg retrieval process under sedation.

The central purpose of this bill should not be forgotten. The central purpose of this bill is to ensure that the reproductive technologies are provided in a quality-controlled, safe and ethically sound manner, and to protect from exploitation vulnerable individuals.

Bill C-13 sets out seven principles, (a) through (g) under clause 2, declaring that the Parliament of Canada recognizes the following:

- (a) the health and well-being of children born through the application of assisted human reproductive technologies must be given priority...
- (b) the benefits of assisted human reproductive technologies and related research for individuals, for families and for society in general can be most effectively secured by taking appropriate measures...
- (c) while all persons are affected by these technologies, women more than men are directly and significantly affected...
- (d) the principle of free and informed consent must be promoted and applied...
- (e) persons who seek to undergo assisted reproduction procedures must not be discriminated against, including on the basis of their sexual orientation or marital status;

(f) trade in the reproductive capabilities of women and men and the exploitation of children, women and men for commercial ends raise health and ethical concerns that justify their prohibition; and

(g) human individuality and diversity, and the integrity of the human genome, must be preserved and protected.

These, I believe, are all very sound principles on which to base this proposed legislation. I believe no one can dispute them. I believe there is universal agreement that they are necessary.

Although there is no consensus about the merits of every part of this bill, there appears to be strong support for the ban on reproductive cloning. Both ethicists and those in the scientific community generally condemn it. Currently, there are no comprehensive rules that govern human cloning, a practice widely considered unacceptable.

In that particular instance, Canadian scientists hold themselves to a voluntary moratorium. We cannot expect that this will always remain the case. In Italy, for example, in the absence of regulatory laws, we have created an environment in which fertility doctors have impregnated a post-menopausal woman; they have harvested eggs from foetuses and deceased women; and they have experimented with male pregnancy. Although these are extreme examples, none of us would wish to see a similar situation emerge in Canada.

Consequently, there is almost universal support for this part of the bill. Indeed, the "Prohibited Activities" section of the bill, even though it has stirred much social controversy, is well supported by most segments of society. Clause 5 states:

(1) No person shall knowingly

(a) create a human clone by using any technique, or transplant a human clone...

(b) create an *in vitro* embryo for any purpose other than creating a human being...

(c) for the purpose of creating a human being, create an embryo from a cell or part of a cell taken from an embryo or foetus or transplant an embryo so created...

This subclause is important. Subclause (d) states:

(d) maintain an embryo outside the body of a female person after the fourteenth day —

I repeat, "the fourteenth day..."

— of its development following fertilization or creation...

The Hon. the Speaker: Senator Keon, I am sorry to interrupt you.

[Senator Keon]

It is six o'clock. I am obliged to leave the chair until eight o'clock, unless it is the wish of honourable senators that I not see the clock. It only takes one senator to see the clock.

Is it agreed that I do not see the clock?

Some Hon. Senators: Agreed.

Senator Cools: No.

Senator Prud'homme: Your Honour, on a point of order —

Senator Di Nino: See the clock or not see the clock, this is not debatable.

Senator Prud'homme: I would wish to let Dr. Keon finish and then see the clock.

The Hon. the Speaker: Honourable senators, I cannot go beyond six o'clock unless there is unanimous agreement that we not see the clock. Senator Cools is not giving her consent to not seeing the clock. I leave the Chair and will return at eight o'clock.

The Senate adjourned during pleasure.

• (2000)

The sitting was resumed.

SPECIFIC CLAIMS RESOLUTION BILL

MESSAGE FROM COMMONS— SENATE AMENDMENT CONCURRED IN

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons returning Bill C-6, to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts, and acquainting the Senate that they have agreed to the amendments made by the Senate to this bill without amendment.

Some Hon. Senators: Hear, hear!

ASSISTED HUMAN REPRODUCTION BILL

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Morin, seconded by the Honourable Senator Gauthier, for the second reading of Bill C-13, respecting assisted human reproduction.

The Hon. the Speaker: Honourable senators when debate was suspended at 6 p.m. we were on Item No. 7 on the Order Paper, Bill C-13, and Senator Keon had the floor.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I should like to adjourn the debate in the name of Senator Keon for the balance of his time.

On motion of Senator Kinsella, for Senator Keon, debate adjourned.

PUBLIC SAFETY BILL, 2002

SECOND READING—ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C., for the second reading of Bill C-17, to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I will be ready to speak to this item before the end of the week. Although I have unlimited time, there is so much to say that I may even exceed that.

Order stands.

[Translation]

FISHERIES AND OCEANS

COMMITTEE AUTHORIZED TO MEET DURING SITTING OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, the fisheries committee has started to sit. Therefore, I am seeking leave for it to continue its work even though the Senate is sitting.

The Hon. the Speaker: Honourable senators, is leave granted?

Some Hon. Senators: Agreed.

Motion agreed to.

NATIONAL ANTHEM ACT

BILL TO AMEND—THIRD READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Poy, seconded by the Honourable Senator Milne, for the third reading of Bill S-3, An Act to amend the National Anthem Act to include all Canadians.—
(Honourable Senator Lapointe).

Hon. Jean Lapointe: Honourable senators, I have learned that voting in favour of Bill S-3 would do justice to the

honourable Stanley Weir, author of the English version of our national anthem. By supporting the bill of Senator Poy, whom I congratulate for her excellent work, we will be correcting the injustice done following recommendations by the Special Joint Committee of the Senate and the House of Commons in 1968 which had the effect of changing Mr. Weir's text.

I fully support Senator Poy's bill and I urge all senators to do likewise.

Hon. Joan Fraser: Honourable senators, I have always admired Senator Lapointe's commitment to artistic integrity, but does he realize that, with Senator Poy's bill, we would be keeping other changes made by Parliament, including some atrocious turns of phrase and dramatics and that the text still would not reflect the late Mr. Weir's intent?

Senator Lapointe: Honourable senators, I am not aware of any such massacres. All I do know is that the phrase "Our sons command" is the only thing we are dealing with; we are reverting to the original version. Other changes I regretfully know nothing about.

Hon. Serge Joyal: Honourable senators, if I understand correctly, the objective of the bill is to reflect ...

[English]

The Hon. the Speaker: Senator Joyal, do you have a question or do you wish to speak to the bill?

Senator Joyal: I wish to ask a question.

[Translation]

Senator Joyal: Honourable senators, the objective of the bill as I understand it is to reflect the equality of men and women and to properly recognize the contribution women have made to building Canada. There will, however, still be other anomalies remaining in the wording which clash with contemporary standards. For instance, in the French version, we sang this morning:

[...] car ton bras sait porter l'épée, il sait porter la croix."

The cross is a symbol of Christian faith. It does not represent all of the faiths in Canada. If we change the original wording, ought we not to make other changes to reflect the present day values Canada expresses in its legislation, in its Charter, and in particular in the religious diversity that characterizes this country?

• (2010)

Senator Lapointe: It is a question of interpretation, Senator Joyal. When we say "il sait porter l'épée et sait porter la croix", in my opinion it means that we know how to fight and become soldiers and we also know how to bear life's daily burdens. It is not a question of religion despite what some say. It is a question of interpretation and it is the wrong one. Without boasting, I know my craft well enough to know what a song is.

In light of what Senator Fraser has said, I am a bit reluctant. That said, no one must tinker with the French Canadian national anthem. I shall defend it to the end and against all comers!

Hon. Marcel Prud'homme: Honourable senators, my good friend, the Honourable Senator Lapointe, anticipated that I was going to ask him to define "la croix" or the cross. I have already heard him give a similar speech. Excuse me, that was my question and you answered it magnificently.

I have a supplementary question. In 1968, I was a member of the committee appointed by Mr. Pearson. There are not many left in Parliament from that committee, just Senator Forrestall and myself. It was a long time ago. My fear — and I think it is justified — is just what Senator Joyal, Senator Kroft and others have told us: if you change one word, you will have to change others.

Currently, some people want to remove the word "God". Others object to "Native". The danger in revisiting the wording of a national anthem, be it English or French, is that it is extremely difficult afterward to say no to those with such interesting, well-researched proposals as that of Senator Poy. That is my fear and that is why I will vote against this bill. I would like your opinion on the dangers of revisiting the wording of the French or English national anthem.

Senator Lapointe: I sometimes sing the national anthem in English but only at the end. A national anthem, like a song or a symphony, is a work of art created by our artists. If anyone changed 25 notes of Liszt's Hungarian Rhapsody, they would get booed! I do not think that we should change the original in any way whatsoever.

When Senator Poy tells me that we made a mistake in 1968 and that this change brings the 1968 version back into line with the original, I am in complete agreement.

You are right. If any national anthem is as problematic as ours, multiplied 50 times over, it is France's national anthem, *La Marseillaise*. Try to change a single note or word in France's national anthem, which is incredibly violent, and you will get a beating. We do not need to beat anyone. We are pacifists.

[English]

Hon. Anne C. Cools: I was about to ask Senator Lapointe a question, but he has begun to answer my concern. He was talking about the absolute resistance that would be put up in France if anyone tried to change their anthem, *La Marseillaise*, by one dot, word or letter. It is the same in the U.S., with *The Star Spangled Banner*. Their anthem still talks about their fight with the British, and blowing the British to smithereens.

[Senator Lapointe]

What is it about Canada that we feel we have to change our history daily when other countries preserve and cherish theirs?

[Translation]

Senator Lapointe: If I understand correctly, you are repeating what I just said, unless I misunderstood your question.

[English]

Senator Cools: I was asking the honourable senator to address the social phenomenon. He spoke about *La Marseillaise*, and I agree with him. These are pieces of art, pieces of history. They are usually created at the time of a country's formation or thereabouts, and there they are. They reflect the country at one point in time. That is just the way it is.

What prompted my question is that, yes, there is this concern about the 1908 version. However, my understanding is that the descendants of the composer of the lyrics of *O Canada!* are disputing whether or not those were the 1908 words, and whether or not there is another version. My understanding is that the descendants of Mr. Weir do not agree with these changes.

When we are told that we are going back to the 1908 version, that has to be properly established and proven before us. The fact is that what we are changing is what has been accepted by Canadians for 60 or 70 years. It is the version that has been established since World War I. I just wonder about this phenomenon of constantly revising history.

An Honourable Senator: Question!

Senator Cools: I do not believe that equality is the same as revising history. I have strong opposition to what may be called the deconstruction of history.

An Honourable Senator: Question!

Senator Cools: My question is there. I was asking about the phenomenon of revising history. History is what it is, with its imperfections and its warts, like people.

[Translation]

Senator Lapointe: You are perfectly right. We should not, as Senator Prud'homme said, make changes to a work of art, for fear of not recognizing it 300 years down the road.

Has the time come today to make changes? I am not in a good position to judge. Another bill addresses copyright. Copyright is a sacred right. If you do not like a painting and spray orange paint on it, claiming it makes it look more modern, I say that is a crime, a sacrilege. I also think that changing national anthems is a sin.

[English]

Senator Cools: That is what we are proposing!

The Hon. the Speaker: Honourable senators, I regret to inform you that Senator Lapointe's time has expired.

Hon. Douglas Roche: Honourable senators, I wish to support Bill S-3, and commend Senator Poy for her vision and persistence in bringing this bill through the processes of the Senate to third reading.

The arguments for this bill have, by now, been well set forth. The Standing Senate Committee on Social Affairs, Science and Technology unanimously approved this bill. Let us not dwell on trivial points, which will be never-ending. Let us rise to this occasion. Let us not make "the best" the enemy of "the good". It is good to move forward on this bill.

• (2020)

We are not constantly revising history; we are making our history relevant to this moment.

Senator Cools: If you do not like it, then change it.

Senator Roche: This bill is about women and fairness to them.

Honourable senators, it is time to pass this bill, and thus have the Senate make an important statement on behalf of equity for the women of Canada. This bill deserves passage and the Senate would do itself proud to pass it right now.

Some Hon. Senators: Hear, hear!

Senator Cools: I would like to ask a question of Senator Roche. When last I looked at the data, I was informed that the majority of Canadians is universally against this change. If this is so good for Canada, why is it that Canadians do not like it or want it?

Senator Roche: I would have to tell Senator Cools that this is not my reading of public opinion. As a matter of fact, I have a file full of letters from almost every province in Canada, urging me to support this bill on behalf of the women of Canada, and in fairness and equity to them.

Senator Cools: I was not talking about your letters. We all have letters. I have a file of letters opposing it. I was talking about concrete evidence that this is wanted by the people of Canada and that it is not just the invention of a few members of the elite sitting in this chamber.

Senator Lynch-Staunton: What about the children of Canada?

Senator Roche: I am trying to answer the question, Your Honour.

The movement to fairness and equity for women in Canada is not some sort of figment of our imaginations; it is happening. It is all around us.

Senator Cools: I know. I sit here daily.

Senator Roche: There are people, both men and women — as a matter of fact, honourable senators, now that I am getting going, Mr. Stewart Lindop of Sherwood Park — which is a suburb of Edmonton, Alberta — a distinguished veteran of World War II, who received the Queen's Jubilee Medal for his service to Canada, has been an outstanding proponent of this change on behalf of the Canadian Legion and the Canadian Armed Forces. It is not just women who are seeking this fairness. There are many men as well. It is time that men woke up and recognized this reality of Canada's present existence.

Senator Cools: As a woman — and when last I checked, I was one — I would like to say that the opinion you express is not the opinion of most Canadians. I would also say it is not the opinion of most women in this country. I would also like to say it is not the opinion of most people in this country.

I want to tell the honourable senator that a lot of women purport to speak for women. I have news for you. That is a lot of rubbish. There are a lot of women who feel very strongly that their roots in this country are worthwhile —

An Honourable Senator: Question!

Senator Cools: — and are worthy of being preserved, as the history of Canada is worthy of being preserved without being revised.

However faulty and flawed that history is in places, it is still the only one that we have.

Senator Roche: Honourable senators, outside this building, a few steps away on the hill, is a new and thankfully modern statue of five Alberta women who stood up in those days to ensure that women would get the right to be members in this Senate. Thanks to those pioneers, women have come into the Senate and are serving today in a distinguished manner. They deserve to be represented in what Senator Poy's bill represents, not just by women, of whom there are plenty across this country, according to the surveys, but also by men who will stand up and say that it is time that we eliminated any kind of discrimination against the women of this country.

Senator Cools: I think, honourable senators —

Some Hon. Senators: Oh, oh.

Senator Cools: Quite frankly, the concept that the national anthem of this country is discriminatory or against women is a wild assertion. I will tell honourable senators something now. If we know anything — this morning, honourable senators, I was at that memorial celebration and if you know anything about men, honourable senators, every penny they have ever earned and everything they have ever had, they have given to their wives and to their children.

Some Hon. Senators: Oh, oh!

Senator Cools: We sit in this chamber day after day after day and malign and revise history. I have listened to Senator Poy. I have listened to her talk, cite the Persons case, and talk about Lord Sankey, when he talked about barbarous times when women were excluded from office. If you go to the judgment, and saw what he had to say, when he made those statements about those positions being from times more barbarous than others, he was talking about the times when men came to meetings under arms, under force of arms.

Honourable senators, if we were to look at the space between the two sides of this chamber, this aisle here is — I forget how many swords' lengths, because it was intended to be, to make sure that blood would not flow.

Honourable senators, since I have the opportunity, the expression "drawing blood" is an old parliamentary expression, because it came from the time when disputes would arise —

An Honourable Senator: Question!

Senator Cools: — to such a heat that swords might touch and blood might be drawn.

If we are really to talk about our history, honourable senators, let us look at our history. I want to tell you something. We are so elitist in this chamber. Well, honourable senators, most men in this country are blue-collar types. They are coal miners, they are construction workers, plumbers and welders. They do not earn a lot of money. They will never be judges. They will never be able to say, "I want to be 'X' in this chamber". All I say, honourable senators, is let us be balanced and fair.

If I were to write a national anthem, I may not write today what Mr. Weir wrote. It might be amusing. Honourable senators, if any of us had a chance to write the national anthem, we would write a different national anthem from what we have now. You know, honourable senators, if I were to write anything, I would write it differently from what was written 100 or 150 years before us. The fact of the matter is that what we have before us is a product of a previous age, something that was adopted because of its popular use in the community. That is all I am trying to say to honourable senators: that Canada's history and Canada's past is worthy of preservation.

Honourable senators, you know, I was not born in this country, but I can just as easily say, "Well, Canada is not my native land".

• (2030)

Honourable senators, I do not mind. Everyone can make speeches here.

I challenge the honourable senator and I ask him what is his concrete evidence for the fact that this ancient piece of literature, this ancient piece of music, is discriminating against or hurting anyone. It is like saying that John Graves Simcoe, poor fellow, was a man and did not have enough foresight to see many things. This is the biggest problem in this country. Fundamentally, we do not believe our history is worthy of recognition, and we feel we have to amend the Constitution and amend history every day. You will never get support from me for that.

Senator Roche: Honourable senators, it has been suggested that I give some evidence on behalf of my position. First, when I spoke this evening, I did not intend to use this morning's event as part of my argumentation. I am referring to the memorial service held in this chamber this morning under His Honour's chairmanship. I was there. It is my belief that those who gave their lives in the wars of our past, including the Korean War, did so not on behalf of one gender; they did so on behalf of the people as a whole. It is the people as a whole who ought to be recognized in our national anthem. If we have been late in repairing a discrimination, let us not falter at this moment, for as Senator Banks reminded us a long time ago in this debate, the wording of "in all of us" instead of "thy sons" was in the original version of the anthem.

The senator asks me for some evidence of my concern. I have four daughters who have educated me quite a bit over the years. I think that as samples of public opinion, my four daughters are a pretty good reflection of what Canadians feel about the fairness of the anthem.

Honourable senators, I believe that we have had a sufficient debate on this subject, and I hope we can vote tonight to pass this bill.

Hon. Senators: Hear, hear!

Some Hon. Senators: Question!

The Hon. the Speaker: Does Senator Cools wish to speak?

Senator Cools: I wish to speak, but I do not wish to speak now. I do not have my file in front of me. The hour is late.

The Hon. the Speaker: It is hard to hear you from this distance.

Senator Cools: This is the justice that I always hear from my female sisters.

Senator Lynch-Staunton: Not your male sisters?

Senator Cools: Senator Lapointe has just spoken. It is quite normal for debate to go on, a speaker to speak a day here, a day there, but yet my sisters would deny me that. Do they think that they advance the cause of sisterhood? I do not think so. I have a view, and I think honourable senators know that I have done a fair amount of research on the subject matter. Senator Lapointe has spoken. I would like the opportunity.

Do you want to speak now Senator Banks?

Senator Banks: When you are done.

Senator Cools: I do not want to speak now. You go ahead and speak, Senator Banks.

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, one cannot rise and claim to want to speak when in fact one does not. There are honourable senators who came back at 8 p.m. to listen to sensible speeches. I notice that, all of a sudden, we are wandering from the point and wasting a great deal of time. Let us not abuse the patience of those who are here to do constructive work.

If an honourable senator wishes to speak, he or she should also leave time for others to speak in turn. In my opinion, to speak more than once is an abuse of the privileges of the honourable senators who are here to listen to speeches.

[English]

The Hon. the Speaker: Is this the same point of order or a different one, Senator Prud'homme?

Senator Prud'homme: A different one.

The Hon. the Speaker: I will deal with them one at a time.

Sometimes, with the switching of the microphones, it is difficult for me to hear senators at the other end of the chamber. I asked Senator Cools, because she has been rising a lot, whether she was putting a question or speaking. I do not know to this moment whether she said she was wanting to speak or wanting to put a question. If there was time, and I think we are fast running out of Senator Roche's time, then she could have put a question. That is fine. If she wanted to speak, I would have said to her that Senator Banks has my eye and I would go to him next for a speech and then go to her for a speech, if she wishes to speak. With that explanation, perhaps honourable senators will understand better the problem I have had from the Chair.

I would like to read a couple of rules that I have been looking at because I am not just sure where we are going sometimes with the exchanges on speeches.

Any senator, of course, can decide not to take questions or to allow comments. The relevant rule is rule 37, which states:

Except as otherwise provided in these rules, or as otherwise ordered by the Senate:...

(4) Except as provided in sections (2) and (3) above, no Senator shall speak for more than 15 minutes, inclusive of any question —

— singular —

— or comments —

— plural —

— from other Senators which the Senator may permit in the course of his or her remarks.

The other rule I would like to just remind honourable senators of is rule 51, which states:

All personal, sharp or taxing speeches are forbidden.

In terms of the civility of debate, the recognition of a speaker's time and the right to put questions or make comments without incurring a lot of heckling or a lot of other reaction from the chamber, that is something I would remind honourable senators would facilitate our work, not that there is anything against heckling or exchanges. I thought that I would remind honourable senators of those two rules.

I want to clarify the situation between Senator Cools and I. I still do not know whether she wanted to put question or whether she wanted to speak.

Did you want to speak or did you want to put a question, Senator Cools?

• (2040)

Senator Cools: Honourable senators, while I was in the process of putting a question, I could hear a lot of general comments from these quarters. I was trying to state very clearly to the chamber that I want to speak. Third reading has only just begun on this particular bill, and I am quite happy to defer to Senator Banks if he wishes to speak now. However, I had been asking questions, which were pretty clear. I then said that I wanted —

The Hon. the Speaker: Thank you, Senator Cools. I understand now. Unfortunately, Senator Roche's time has expired. Senator Banks.

Hon. Tommy Banks: Honourable senators, I support this bill. I want to make three short, but I hope, cogent points about it.

First, this ancient lyric that Senator Cools suggests we are altering, harks all the way back to 1980. The present authorized lyrics of *O Canada!* were set out in the National Anthem Act in 1980. Up until about 1957, all Canadians sang a different set of lyrics, but in 1980, a substantial change or two was made in the generally accepted lyrics to *O Canada!* That is how old these lyrics are.

Second, Mr. Stewart Lindop, to whom Senator Roche referred, made the suggestion of either this change or one similar to it in the late 1980s, in a letter he wrote to his member of Parliament at the time. The most cogent point is the one about which Senator Cools asked a question, namely, the successors to the author and their view. With all due respect to them, the grand rights question here, the moral right question, must, I think, be referred only to the author and not, with all due respect, to the successors of the author.

The author in question was not Calixa Lavallée, because, as we all know, he wrote the music. The lyrics upon which this whole question is generally based were written by His Honour Recorder Robert Stanley Weir, from Montreal. I have before me, honourable senators, the copy which was registered with the United States copyright office by the Delmar Music Company in 1908. In that same year it was entered, according to the act of Parliament in Canada, by the Delmar Music Company at the Department of Agriculture, which was then the repository of measures of copyright and patent in this country.

In the seventh measure of this original version by Mr. Weir, on the third beat, the third quarter note of the seventh measure, the word is "us".

Senator Cools: In response to all this, honourable senators, I move the adjournment.

Some Hon. Senators: No!

The Hon. the Speaker: It is moved by the Honourable Senator Cools, seconded by the Honourable Senator Prud'homme, that further debate be adjourned to the next sitting of the Senate.

Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: No.

Some Hon. Senators: Yes.

The Hon. the Speaker: Will those in favour of the motion to adjourn please say "yea"?

Hon. Senators: Yea.

The Hon. the Speaker: Will those opposed please say "nay"?

Hon. Senators: Nay.

The Hon. the Speaker: I think the "nays" have it.

And two honourable senators having risen:

The Hon. The Speaker: Call in the senators. There will be a one-hour bell, unless it is agreed otherwise.

• (2140)

Motion negated on the following division:

YEAS THE HONOURABLE SENATORS

Atkins
Banks
Buchanan
Comeau
Cools
Gustafson
Kinsella

Lynch-Staunton
Nolin
Prud'homme
Robertson
Sparrow
Stratton
Tkachuk—14

NAYS THE HONOURABLE SENATORS

Andreychuk
Biron
Callbeck
Carney
Carstairs
Chalifoux
Chaput
Christensen
Cordy
Downe
Fairbairn
Graham
Hubley
Johnson
Kroft

Lawson
Léger
Losier-Cool
Mahovlich
Milne
Pearson
Pépin
Poulin
Poy
Robichaud
Roche
Spivak
Trenholme Counsell
Wiebe—29

ABSTENTIONS THE HONOURABLE SENATOR

Fraser—1

Senator Cools: Honourable senators, I rise to speak to Bill S-3 and to record my objection to what I consider the philosophical premise of the bill, which is that men are enemies of women and children and that women are oppressed by the patriarchy. I would like to begin by saying that my mother was a strong Methodist who taught me to respect the labouring classes. A long time ago, I was able to observe that most men are blue-collar workers, miners, construction workers and lumberers, who perform brutish, hard, dirty work.

• (2150)

Honourable senators, I would like to say that I am in favour of equality, but some years ago I started to distance myself from radical gender feminism, and perhaps I should tell some honourable senators why. In my view, I found it hard to accept that women, by virtue of gender, are inherently virtuous, and men, because they are the male of the species, are inherently aggressive and evil. I had to distance myself from that view because I cannot believe that gender conveys morality or virtue. I had to distance myself from the proposition that women are morally superior to men, that men are morally inferior and that, somehow or other, men are morally defective, and lurking inside of every man is a rapist and a wife beater.

Honourable senators, I say all of this as one of the foremost persons in the country on domestic violence and one of the first people in the country to bring forth the issues of domestic violence. Honourable senators, I also say all of this as one of the first women in the country to take up the banners of equality and independence of women, which I believed in then, and still believe in now.

I would like to share with honourable senators one of the reasons I began to distance myself from radical gender feminism. I could quote Germaine Greer or Madame Justice Bertha Wilson and her assertion that women judges really make a difference and that women are more ethically caring. I just quote one, Sally Miller Gearhart, herself described as a radical lesbian feminist, in an article by her entitled, "The Future — If There is One — is Female," published in the 1982 book *Reweaving the Web of Life: Feminism and Nonviolence*. Sally Miller Gearhart said the following:

To secure a world of female values and female freedom we must, I believe, add one more element to the structure of the future: the ratio of men to women must be radically reduced so that men approximate only 10 per cent of the total population.

Yesterday we were talking about genocide. This is the statement of a leading American feminist.

Germaine Greer said this in her 1999 book *The Whole Woman*:

... men are freaks of nature, fragile, fantastic, bizarre. To be male is to be a kind of idiot savant, full of queer obsessions about fetishistic activities and fantasy goals, single-minded in pursuit of arbitrary objectives, doomed to competition and injustice not merely towards females, but towards children, animals and other men.

Honourable senators, I had to distance myself from that point of view.

In our exchange a little while ago, I asked Senator Roche to give me some evidence of the public support for their position. I have not had much time to prepare for this intervention, but I was able to rummage through my files quickly, and I came across a poll from *The Globe and Mail*, dated August 8, 2001. It may be outdated, but until someone can bring forth a more recent one, I can accept this and I submit this to the chamber. The headline is as follows:

77 per cent reject attempt to neuter O Canada, poll finds.

Further down, the article states:

A *Globe and Mail*-CTV poll released yesterday found that an overwhelming 77 per cent of English Canadians surveyed think that making the national anthem more inclusive and gender-friendly by changing its lyrics is a "bad idea."

And the view is held equally by men and women.

"In this case, people have spoken: not everything has to change," concluded John Wright, spokesman for Ipsos-Reid. "Some things should just be left alone."

Honourable senators, I have difficulty, quite often, being cast as some sort of dinosaur, as if somehow or other I do not believe in the equality of women. If you knew how I was raised, honourable senators, you have not seen equality until you have met my mother or the family members with whom I was raised, descended of free coloured people in the British Caribbean. You do not know independent women until you have met some of those women. My mother taught me when I was very little to set my own course and to captain my own ship, and to learn to ignore the herd because the herd runs like a pack. My mother used to say to me. "If the herd is running that way, stop and walk in the other direction."

Honourable senators, I would like to clarify a few statements, if I can. There is not time because these issues are so huge and so enormous that we do them a terrible disservice. I want to talk about the Famous Five.

First, they are not famous at all. Most Canadians have never heard of the Famous Five. No one knows who they are. One of the reasons, honourable senators, I have not joined in that drumroll about those statues outside is that I think it was a shame that Canadian women went to the Privy Council, a court in England, to try to overrule or to circumvent or to dominate or to subjugate a Canadian Liberal Prime Minister, Mackenzie King. It may surprise some of you, but I feel a great loyalty to King. That is what they did. That thing out there is no testimony to anything other than a small group of very privileged, elite women who went to a court to subjugate and to get a decision over a Prime Minister and a Parliament of Canada. Besides, the whole thing was foolishness. I will tell you why, honourable senators: at the time they went, women were already members of the House of Commons, like Agnes Macphail, about whom I have read a lot. There was a time in my life when I read a lot of this, honourable senators — not recently — but I read a lot about it. I am saying to you, do not be caught up in this illusion. Men and women are equally flawed, equally imperfect, equally capable of sin, equally capable of aggression. That is the nature of human beings. They are imperfect, and God knows I know how imperfect we are.

Honourable senators, I do not talk about these things a lot, but some of the things those women did are nothing to be proud of.

I read a lot — not recently — about Emily Murphy. Now there was a racist woman. She wrote a book that I have not looked at for a few years called *The Black Candle*. I think it was about drugs. She had done an inquiry into the drug trade, and, let me tell you, honourable senators, the things she said about non-white peoples, particularly the Chinese, I would not repeat. I would not dignify them to repeat them.

Do not uphold the five persons to me as some group for me to worship. To be quite frank, honourable senators, I heard Senator Carstairs say in this chamber once that what they said would not be tolerable in today's community. I have news for you senators: it was not tolerable then, either. A lot of people did not accept it, so I am not quite one to uphold all of that, too.

Honourable senators, there are differences between men and women and, yes, there have been injustices, but look at these injustices for what they are. They were acts that were limited by the circumstances of their time and the perception of roles in society that were current at the time.

• (2200)

For Senator Poy and others who believe that we have to reverse history and rewrite it, I would like to quote Mr. Blackstone, that great British master of the common law, on the subject of women. I refer to Volume I of Blackstone, the 1876 edition, edited by Robert Malcolm Kerr. There are many editions. At the end of the chapter where Blackstone is writing about the relations between husband and wife and the authority of the husband, Mr. Blackstone gives us a phrase that I invite honourable senators to contemplate. He says:

These are the chief legal effects of marriage during the coverture; upon which we may observe, that even the disabilities which the wife lies under, are for the most part intended for her protection and benefit. So great a favourite is the female sex of the laws of England.

The disabilities that women laboured under, and they are serious, were there because, believe it or not, there was a sense of protection. Women were not expected to be pressed into service or into war. When the press gangs came looking, they did not look for women. When Mackenzie King was conscripting, he was not looking for women either. Men had to do it.

Remember when Senator MacEachen told us about his father going down into the coal mines, into darkness, before the sun came up. Some of those men never saw the light of day — some of those men. We cannot reverse that.

Honourable senators, when we see violence between men and women, look at it as pathology of intimacy, not men oppressing women. It is not the patriarchy oppressing women. Look at it as pathology of intimacy between men and women.

Honourable senators, in this particular instance, if we think that history was imperfect then, we cannot change it. God knows that I am a different race from the people here. If I want to talk about history, I can run very far. However, I choose not to do that because I always respect reason and intellect.

That is all that I was expecting senators to do a couple of hours ago. The debate had only just begun. I said that I wanted to speak. Through brute force, spitefulness, or whatever you want to call it, senators decided to vote me down. I scrambled a few notes together, not the best and certainly not the best I have ever done.

In closing, honourable senators, I wish to come to an issue that keeps niggling at me. It concerns this business about changing the national anthem's words back to Judge Weir's original words. Perhaps Senator Poy is right. I do not know.

I do know, honourable senators, that the descendents of Judge Weir were in touch with me. They tell me that they can find no evidence of what Senator Poy has said. Perhaps that was examined in the committee. I do not know.

Steven William Weir Simpson wrote a letter to me dated February 27, 2002, which in part reads:

...Parliament has done enough damage already. I attach a copy of Judge Weir's original 1908 version in his own hand. Also, I append his revision of the lyrics in 1921, introduced, I believe in an address of the Canadian Clubs, which we have always sung, certainly in Quebec, and I believe most of eastern Canada.

The copy that he has sent me does not match with what Senator Poy may believe to be correct. I am quite willing to concede that. I feel no investment personally in this matter. However, this question of the difference in the lyrics should be dealt with.

Honourable senators, in my view, when a debate is not pressing and when a debate is still young, unripe and still quite novel, it is an act of enormous disrespect to vote colleagues down who wish to take the adjournment. It is something that I rarely do. Whenever I have done it, it is usually because it is a government initiative and the matter is pressing in time.

Honourable senators, I oppose what is happening. There is no amount of force in this world that will cause me to change my mind because, believe it or not, I love this country and I believe in it. With all its isisms, flows and imperfections, I will uphold it. Whatever it has done to its native people, it is still my country. I support no effort to return —

The Hon. the Speaker: I regret to advise the honourable senator that her time has expired.

On motion of Senator Prud'homme, debate adjourned.

PERSONAL WATERCRAFT BILL

THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Banks, seconded by the Honourable Senator Spivak, for the third reading of Bill S-10, concerning personal watercraft in navigable waters.—(*Honourable Senator Hervieux-Payette, P.C.*)

Hon. Mira Spivak: Honourable senators, I have spoken to this bill many times. I simply want to thank all those people who have commented on the bill.

Hon. Tommy Banks: Honourable senators, I believe that I am correct in saying that if Senator Spivak speaks now, it will close debate on this bill.

The Hon. the Speaker: It is Senator Banks' motion; therefore, he would close the debate.

Senator Banks: I beg your pardon.

Senator Spivak: I simply want to thank all those who have appeared before the committee across the country who have expressed their opinions, both positive and negative, mostly positive. I want to thank all of the cottager associations and all of the other individuals who have come to support this bill. I also want to thank those who have spoken on it, such as Senator Moore —

The Hon. the Speaker: I am sorry to interrupt the Honourable Senator Spivak, but she has spoken on this bill already and is entitled to speak to it only once.

Senator Spivak: That is fine.

The Hon. the Speaker: Is the house ready for the question?

Hon. Senators: Question!

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Agreed.

An Hon. Senator: On division.

Motion agreed to and bill read third time and passed, on division.

• (2210)

HOLOCAUST MEMORIAL DAY BILL

THIRD READING

Hon. Marie-P. Poulin moved the third reading of Bill C-459, to establish Holocaust Memorial Day, as amended.—(*Honourable Senator Poulin*).

Hon. A. Raynell Andreychuk: Honourable senators, I rise to speak to Bill C-459, to establish Holocaust Memorial Day.

I want to deal with two preliminary points that have little to do with Bill C-459 but very much to do with the operations of the

Senate. I add my voice to the deep disappointment in the way the bill was introduced in the Senate. The rules are clear that there is a mover and a seconder, simply. Agreement with any resolution or bill comes in debate and, of course, in a final vote.

In fairness to all those senators who were not named as alleged seconders, it would be improper and unfair to presume that they are not supportive of Bill C-459 or, more particularly, a Holocaust Memorial Day.

Honourable senators will note that I was not on the list. In my case, contrary to some other senators, I was contacted by Senator Grafstein, but on the floor of the chamber when I was getting ready to speak on another issue. As has been my practice on every issue, not only in the Senate but perhaps because of my legal training and my years on the bench, no matter how worthy a principle sounds, I want to see the proposed legislation or the motion before I agree. Therefore, I said to Senator Grafstein that I would like to read the bill and I would get back to him. I should say he agreed with that request.

When I attempted to get back to him, I was told that he was no longer the sponsor of the bill. It was only on Monday, on the introduction of Bill C-459, that I found out that Senator Poulin was the mover of the motion. By that time, I was told that there would be no mention of seconders but simply the usual rules of moving a bill and one seconder. To my dismay, the list of names was read out and, of course, without my name attached.

The second issue that I would raise is the following: The best way to commemorate the Holocaust and to pay tribute and recognition to the violence, terror and injustice that was perpetrated against 6 million Jewish men, women and children between 1933 and 1945 would be to give my full attention to this bill, exercising the highest standards of care, due process and good democratic principles of operation in this Senate. Therefore, I was saddened and disappointed to hear some honourable senators in this chamber express disapproval of studying this bill in the Committee of the Whole. At the very same time, certain senators were indicating that they knew nothing of the Holocaust during its perpetration or after, until recent years. Surely, the best way that I can give my commitment to this phrase contained in the preamble —

...to using legislation, education and example to protect Canadians from violence, racism and hatred and to stopping those who foster or commit crimes of violence, racism and hatred...

— is to use every opportunity in this chamber and as a senator to support democratic principles and not shortcut them. To speak to this issue at every opportunity is surely the way to proceed. Is this record not a source of tribute and education?

As a personal note, I have lived the consequences of the Holocaust, as have many Canadians.

Returning to Bill C-459, on its merits, I wish to give my support to this bill. In answer to some of the questions I put yesterday, Senator Kroft has clarified — and I presume that Senator Poulin and Grafstein are in agreement as they did not voice any objections — that this bill is to establish a Holocaust Memorial Day for the 6 million Jewish men, women and children who perished under the policy of hatred and genocide, and the deliberately planned and state-sponsored persecution and annihilation of European Jewry by the Nazis and their collaborators between 1933 and 1945.

By honouring these people, it is not to say that there were not previous genocides or hatred perpetrated by the state, but that its horror has galvanized the international community to attempt to deal with the consequences and to re-uphold human rights.

Honourable senators, every life is precious and equal. It is our duty to remember, to act and to prevent further atrocities wherever they occur.

With respect to those 6 million people, it is extremely important that we continue our efforts to stamp out anti-Semitism wherever it exists. If this bill reminds us to do so, it will have served a purpose in Canada. We cannot stand by and hear comments, as those made by the former Prime Minister Mahathir of Malaysia, and not take the strongest action taken there. We cannot have synagogues and cemeteries desecrated without reaction. We cannot allow freedom of speech to allow hate propagation by the likes of Keegstra.

I believe in this precedent, that a Holocaust Memorial Day designated to honour and remember the 6 million Jewish men, women and children is worthy of support to further justice and peace in this world.

When one looks at the atrocities that have occurred since the Holocaust, the world has yet to develop the commitment to uphold human rights, but I would implore all honourable senators to strive to live this challenge every day in their words and their deeds.

Hon. Senators: Hear, hear!

Hon. Mira Spivak: Honourable senators, I congratulate Senator Grafstein and those in the other place who brought this bill forward. I know it is a very befitting memorial in legislation for those people who were victims of the Holocaust.

I would add a personal note. This bill means a great deal to me because my maternal grandfather and most of my aunts, uncles and cousins were victims of the Holocaust. This particular action and the very eloquent words that have been spoken here tonight are fitting memorials to all of those people who were victims of the Holocaust.

Hon. Senators: Hear, hear!

[Translation]

Hon. Marcel Prud'homme: Honourable senators, in the rush, not all the facts were presented, as was pointed out yesterday. Having discussed this with the honourable senators, I would like to reiterate that unfortunately, several questions remain unanswered. Consequently, I had to do a little research and, as you know, I will be voting in favour of this bill. Nonetheless, I do not like the typically secretive approach that was taken. As usual, things were done in such haste that no one was able to answer yesterday's questions in a satisfactory manner.

For the honourable senators who are interested, including Senator Mahovlich and a few others, I will list the holidays that seemed to trouble many of our colleagues, in order to make sure there is no confusion in the minds of Canadians for several years to come.

Let us talk about Easter, 2004. We noticed some reluctance by some to advertise their religious denomination, be it Christian or Roman Catholic, while others are already talking about the dechristianization of our institutions. We will recall the Honourable Senator Kelly's memorable speech. Very few senators at the time paid attention to what Senator Kelly had to say.

• (2220)

I myself am Roman Catholic. I know there are certain statutory holidays in Canada and others that are commemorative days, which is a different thing. When a person visits another country, he inquires when the statutory holidays are. There are usually six, seven or eight of these. Then there are some more commemorative days, such as the one proposed by the House of Commons. There will not be any confusion, although some senators appear to be concerned about what would happen on Easter Sunday or Good Friday.

In 2004, Easter will fall on April 11, and the commemorative day will be April 18. In 2005, Catholics will be celebrating Easter on March 27, which is not a problem with the other day we would be commemorating, which would be May 6. Easter in 2006 will fall on April 16, and Yom ha-Shoah on April 25.

In 2007 — and this was asked — Easter will be celebrated in Canada on April 8, while Yom ha-Shoah will be April 15. In 2008, Easter will fall on March 23, and Yom ha-Shoah on May 2.

The year 2009 will mark a number of departures, as will 2004. In 2004, 11 senators will be leaving us, and in 2009 another 11, myself included if God gives me breath until then.

In 2009, Easter will be April 12, and I will be marking Yom ha-Shoah on April 21. This is the sort of basic information we could have gotten from witnesses if we had heard any. It means that the date will change yearly, so we need to be prepared, to be logical.

What I find bizarre, and there is one person here who understands very well what I am going to talk about, is the matter of saying "never again", everything is fine, everybody loves everybody else, no more horror, and so on.

I thought my country of Canada could avoid these hate campaigns. I thought my province — I have not yet gone so far as to refer to "my state" — my Quebec, which is so often faulted, could do so; that my City of Montreal, which is going to experience — and this is terrible — great problems, what with mergers and now demergers, with talk of rich and poor, English and French, could do so. But here we are, just at the time we are talking of love, open-mindedness and friendship, reading in the September 10 *Suburban* — and this is something that will be brought up often because we are planning to organize the appropriate reaction to it — that Mr. Jody Benyunes, visiting Shaare Zion Synagogue from Florida was quoted as having said:

[English]

"Muslims should not be allowed to immigrate to democratic countries." The article is vicious and unbelievable.

Honourable senators have to understand something. Senator Fraser and I agree on many issues, and we certainly we agree that the *Suburban* is not our favourite newspaper. The problem is the damage it creates. It is circulated house to house all across the West Island of Montreal for free. Usually, it attacks, with great pleasure, French Canadians. However, now, it is a sponsor.

I attended at an event last week sponsored by Mark and Judy Litvak. I was going to make a statement tomorrow because some people may take them to court because, if there is pure hate, it is happening right at the moment we are trying to educate people and remind them of what the Holocaust was all about.

I have always said to Senator Grafstein, with whom I totally disagree on our policies in the Middle East, that we should combine our efforts to explain the horror of the Holocaust to people. A moment ago Senator Spivak spoke to us about her family who went through hell. I must admit that the honourable senator's husband was not too kind to me when I was elected president of the national Liberal caucus in a secret ballot against Sheila Copps, but that is another matter. I won, so all is well.

Now, we are trying to open our hearts and we are inviting every Canadian to commemorate this event every year. However, I find myself in the same boat as those members who would prefer a specific date so that educators can ingrain that date in the minds of the children in their care. However, so be it.

I feel I am a Jew. I would repeat that my remarks this evening are for a lady friend of mine in Montreal called Janet. I will not give you her second name now, but I will eventually. Of course, she is of the Jewish faith. These comments are for her.

I want to try to convince my colleagues. I know I will die trying to convince people who do not want to be convinced. They prefer

to manipulate others and go around in circles, destroying reputations. I can certainly tell you, honourable senators, about reputations that have been destroyed.

It is not only our colleague Leo Kolber who can write books. Honourable senators will be horrified when they know what people can say behind curtain — things that they would not say openly. I call them the gossipers.

At this time, honourable senators, when we want to do something positive, I say that the House of Commons has done it the wrong way. They did it in secret. They have done it —

[Translation]

"Behind the curtain" means in secret. There is a well known expression in Quebec, which translates as "pulling a fast one." A little bit like last night.

[English]

It works. That is what I heard. It is good that we postponed this until today. *The Suburban* is a rag.

[Translation]

If you knew all the insults that we French Canadians endure; in Winnipeg, you are not suffering from that fatal disease that exists in Montreal. We are the ones who have to live in Montreal. And those of you who are offended by my remarks can go ask Senator Fraser, who is a good friend of mine.

• (2230)

Ask her about *The Suburban*, about the damage done by that rag at a time when we are trying to convince people to commemorate each year one of the worst horrors in history.

I can see senators who are looking at me wide-eyed, but who are not even tuning in to the language I am using. It sure is disheartening to try one's best to convince these honourable senators. Some of them probably cannot put up with me. Not only do they not use their earpieces to listen, but they are preparing to leave. Well, leave then!

One thing is for sure: when seeking social peace, one must start at home. But I will combine the two. This anti-Muslim rag — and I am neither a Muslim, an Arab or a Palestinian. I am a French Canadian from Quebec and a nationalist. I make no bones about it. I respect others who are English Canadians from Quebec and nationalists.

That is what sound nationalism is all about. I do not apologize for that. I just received this rag, at this time when we have to face big problems in Montreal. At this time when we are talking about beauty, celebration and commemoration, this rag insults the entire Muslim community. Honourable senators, I intended to move an amendment, and had given notice to this effect. Immediately, the word got out and spread. And what I heard back, honourable senators, was not very nice. I was accused of wanting to use the Rules.

[English]

I want you to know that if I were to make an amendment tonight, that would be it for today's session. I will not give consent to vote on third reading; if there is an amendment, we will have to dispose of it before we vote. However, I will not play the little, silly games of the Commons from the House of Commons, where I was so happy to sit in secrecy, using the little book, just talking to two or three. I hope it will be used as a good example for the future, when you deal with something as important — as horrible — as the Holocaust. It is no time for children or little games. It is time to be stateswoman and statesmen.

I will vote for the bill, and I wonder who will defend it with more passion. There are still some people who deny that the Holocaust existed. There are not many, but I will face them any time, any way.

The Hon. the Speaker: I regret to advise that the honourable senator's time has expired.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I would like to say a very few words tonight with respect to this piece of legislation.

When we put into legislation a commemorative day, as this piece of legislation would do, it is really done for our children and for our children's children. For many of us, the Holocaust is still very real. We heard from Senator Spivak. Clearly, her own immediate family was deeply hurt; that had to affect the extended family. However, what we do know of history is that it is all too often forgotten and all too easy to forget, to allow other events and other times to give a different memory, and to somehow or other colour it so that it is not quite so bad as we really know it was.

Therefore, I would hope that every teacher across this country will use this piece of legislation as a teachable moment, to explain to their children the horrors of what happened, and what happened to children.

When I went to the Holocaust Museum in Washington, I found the entire museum difficult to walk through. For me, the most difficult parts were those dedicated to the children, because these children never had a life. They never had the fullness, the richness of a life to experience because of the atrocities that were perpetrated against them.

I believe we are doing a good thing tonight; we are doing a noble thing. However, it will only be good and it will only be noble if it is used; if it does not just become a parchment of words, but leads to actions. Those actions will be to teach this generation, the next generation and future generations that we must learn from our history; we must remember the horror as well as the good times.

[Senator Prud'homme]

The Hon. the Speaker: Is the house ready for the question?

Senator Grafstein, have you not spoken?

Hon. Jeremiah S. Grafstein: I have not spoken on third reading. I will be brief; the hour is late.

Honourable senators, on its face, this bill establishes a memorial day. Honourable senators have asked themselves: What is a memorial day? The word "memorial" stems from the word "memory." The word "memory" originates from the Latin verb *memorare*, "to bring to mind." In Hebrew, the word "memory," *zecher*, we are told encapsulates both a reflective and an active meaning. To memorialize, to remember, to bring to one's mind, requires one to think, to reflect and, as Senator Carstairs pointed out, to act.

The purpose of this bill is not to nourish the dark and dismal dialectic that led to the Holocaust. Rather, the high purpose of the bill is to inject a dialogue of hope that we can renovate the human spirit, and renovate and repair the human condition. Honourable senators, it is to question, to seek, and as one great poet once said, it is not to yield to the dark, dank impulses of the human condition. This bill points us toward the light that will push back the darkness and allow us to flourish in the sunshine. I urge the speedy approval of this bill.

The Hon. the Speaker: Is the house ready for the question?

Hon. Senators: Question!

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and bill, as amended, read third time and passed.

• (2240)

CRIMINAL CODE

BILL TO AMEND—SECOND READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Mahovlich, for the second reading of Bill C-250, to amend the Criminal Code (hate propaganda).—(*Honourable Senator Tkachuk*).

Hon. David Tkachuk: Honourable senators, I was not sure whether I was going to speak on this private member's bill that was initiated in the House of Commons. I was quite appalled at the short shrift this bill was given in the other place. I sometimes think that our hearts lead our heads, although we have a responsibility to get them working at the same time.

For a private member's bill, this one has generated a tremendous amount of anxiety in the body politic. I heard other honourable senators discussing how many people support the amendments to the National Anthem Act. If we polled Canadians, I think we would find that no one even knows we are dealing with that bill. However, that is not the case with this bill. This bill has generated a tremendous amount of anxiety in the body politic. As a politician, I have learned to listen to the voices not only of support but also of dissent. That is our burden here.

This bill is defined by its author in the other place — a man who describes himself as gay — as legislation that protects homosexuals from the ballast in our society, those who would do another harm for no reason other than that the person being harmed is different from the norm. At our doorstep are the others who disagree that this group requires protection in hate legislation under our Criminal Code. There are those who do not accept the very principle of hate legislation, and there are those who are concerned about the effect of Bill C-250 on freedom of religion and freedom of speech. It is interesting that many of the minority groups protected by hate legislation, Muslims and others, are themselves concerned about the inclusion of the homosexual community in hate legislation under the Criminal Code. Jewish groups, Muslim groups, some Christian groups — themselves minorities — are very vocal in their concern and even, in some cases, their distaste for this bill. Evangelicals, Pentecostals and Catholics join them.

At the heart of their argument is the fact that they speak out against the homosexual lifestyle and see it as an anathema to the teaching of their God. They fear for the loss of their right to argue against a social lifestyle of which they do not approve.

We in this place have a duty to listen to them. After all, there are many minorities in these groups. The Senate was established because the majority would not protect the rights of minorities — it would be too easy to take advantage of them. In this case, I think that is a stretch. This assumes that the majority in a democratic state is so crass and morally degenerate that they have no interest in protecting minority rights. After all, common law clearly says that any person or group who counsels harm against an individual or a group is committing a criminal offence. We have the law to protect people. If you counsel someone to hurt someone else, or create a conspiracy to hurt someone else, or propagate the hurting of someone else, you are committing a criminal offence. The majority, who have written our common law, understand that from time to time groups or individuals may utter threats that should be taken seriously.

I have grown to appreciate the need to be precise in our laws, and in Bill C-250 we are including something called "sexual orientation." While I appreciate the wisdom of our judiciary, I have come to know that judges are capable of being profoundly wrong. They, as we, are not exempt from these human frailties and weaknesses. As legislators, we have a duty to not put too

great a burden on their intellect. It is the court system that has turned the whole meaning of marriage and many of our social programs on their heads. These social programs were designed to protect families with children so that mothers would be able to stay at home and raise children. Those programs have now become a right that attach to conjugal acts. We did not do that; the courts did that.

People tell us that the legal system understands what sexual orientation means. Not for a minute do I believe that. They will stretch and push definitions and we in this place will have no say in it. That is what these religious groups and others — these other minorities, frankly — are so concerned about.

I and many others have reason to be afraid of the power of judges to make new laws by expanding the very definitions that we thought were clear and that the writers themselves in 1982 thought were clear. If the body politic is divided — and honourable senators it is divided — and the people's representatives in their free vote are also deeply divided, then we have a duty to help solve this problem or put it aside for another day.

There is no great crisis in our land and there is the strong possibility that perhaps Svend Robinson, who is a politician, was acting crassly. We do not know that. He represents a community. Perhaps because he infers things about people who oppose the bill, I could infer something about him. Perhaps he is just doing it to ingratiate himself to his own community.

Sexual orientation can mean many things, from homosexuality to the criminality of incest and pedophilia. Homosexuals are not a race. They are defined only by their attraction to members of the same sex. That is fair enough, but it is their sexual behaviour that they say differentiates them. In the statistics that I have looked at, the victims of crime that they claim are crimes against the homosexual community are against males, not against females. Homosexual females are not the object of any kind of crime in the streets.

The other interesting information that can be found in the Department of Justice statistics on this is that those who are mostly the victims of crimes that we call hate crimes are mostly the victims of gang attacks. These are the same gangs that attack old people, heterosexual women, weak males and fat people with assaults and rape. Anyone who is different from a gang is attacked and hurt. It is not personal. These are bad people.

Svend Robinson voted for and supported the gun registry when he should have been thinking about the \$1 billion being spent on eliminating gang crime in the streets of Montreal, Toronto, Vancouver and throughout the land. Honourable senators, it is not the passage of this bill that will save his community from hate crimes, it will be the police and the justice system and the willingness of the community to put money behind it to ensure that these offences do not happen.

Prostitution is not illegal. Why, then, do we not protect prostitutes? We are all aghast about the male who was terribly assaulted and killed in Stanley Park in Vancouver. Police are currently examining the dirt of a pig farm in the Lower Mainland of B.C. where there may be the remains of 50 to 100 women. Now, that is a hate crime.

Many people are worried about religious freedom and freedom of speech. This bill provides that we must protect free speech. Perhaps we should look again at our Constitution, because, it seems, we do not believe in it enough to believe that it protects free speech. Amendments were made to the bill to fortify the protection of free speech and freedom of religion. Our Constitution is not strong enough; we had to put amendments in the bill to say that we are so keen about this that we will add more weight to the constitutional amendments, and that we really intend to protect free speech. We want to make it clear that the bill does not affect religious freedom and free speech. We all know what that means. Some people are afraid that the courts will run away with this bill.

Honourable senators, I am a bit of a libertarian, but, at the same time, I think I am a democrat. All these people who are concerned about this issue have to be listened to. I do not want to see us sit here for two days and run around and say we ought to do this. I want to have lots of debate in this place. We all have a responsibility to respond to what these people are saying, and to do research and make sure that we think about what this bill is saying, and then to act appropriately.

With that, I would like to end my few words on this debate.

On motion of Senator Banks, debate adjourned.

THE FINANCIAL ADVISORS ASSOCIATION OF CANADA BILL

PRIVATE BILL TO AMEND ACT OF INCORPORATION— THIRD READING

Hon. Richard H. Kroft moved third reading of Bill S-21, to amalgamate the Canadian Association of Insurance and Financial Advisors and The Canadian Association of Financial Planners under the name The Financial Advisors Association of Canada.

He said: I do not wish to take much of the time of the house at this hour, and the object of this bill does not really require it. The purpose of this special bill is to amalgamate the Canadian Association of Financial Planners and the Canadian Association of Insurance and Financial Advisors. The new name of the amalgamated corporation will be the Financial Advisors Association of Canada, or Advocis.

The purpose of the amendments proposed by the Standing Senate Committee on Banking, Trade and Commerce are to address some confusion expressed by the Investment Fund Institute of Canada, the Investment Dealers Association of Canada and the Independent Financial Brokers with regard to the new association's role in enforcement in regulating certain activities such as financial planning.

Questions were raised in the committee concerning the association's name, and to a Quebec law that prohibits the use of certain titles similar to the title of financial planner. The Quebec law in question governs those financial planners practising in Quebec who are engaged in the business of providing financial services in that province; and in a regulation made under the law, sets out a list of prohibited titles similar to the title of financial planner.

In an opinion from the Law Clerk's office, that law cannot infringe upon or have any effect on the name that is given to a corporation created by or under federal legislation. Such a corporation, however, would be bound by the Quebec law in the granting of professional designations to any of its members practising in that province. Any member of the corporation to whom it awards the title "financial planner" would have to be a person who has fully satisfied all of the requirements under the Quebec law in order to be qualified to use that title.

I would like to add one thought: I know I join fully with the Honourable Leader of the Opposition in this point. I hope this is nearing the last time that we have to bring one of these special act mergers or accommodations before this house. It is an anachronism that no longer is appropriate. It requires time and expense by the parties to these special acts, and it requires the time and preoccupation of this chamber and its committee on a matter that really does not belong here. While we have not formally put anything into this bill, I think I speak at least for the Banking Committee when I say that we will be looking for the first opportunity to take an initiative under the Canada Corporations Act to make sure that this sort of thing is not necessary in the not too distant future.

The Hon. the Speaker: Is the house ready for the question?

Hon. Senators: Question!

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and bill read the third time and passed.

[Translation]

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I believe that you will give consent to have all items on the Order Paper that have not been reached stand in their place until the next sitting of the Senate.

The Hon. the Speaker: Is it your pleasure, honourable senators, to have all items on the Order Paper that have not been reached stand in their place until the next sitting of the Senate?

Hon. Senators: Agreed.

The Senate adjourned until Wednesday, November 5, 2003, at 1:30 p.m.

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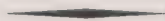
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OFFICIAL REPORT
(HANSARD)

Wednesday, November 5, 2003



THE HONOURABLE DAN HAYS
SPEAKER



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(Daily index of proceedings appears at back of this issue).

OFFICIAL REPORT

CORRECTION

Hon. A. Raynell Andreychuk: Honourable senators, this is the first time that I have had to stand to ask for a correction to the record. Last evening, Tuesday, November 4, 2003, at page 2544 of the *Debates of the Senate*, in the fourth paragraph of the first column, sixth line, a word is omitted. I will read that line:

...and not take the strongest action taken them.

It should read:

...and not take the strongest action taken against them.

With leave of the Senate, I would ask that the correction to be made to the *Debates of the Senate* by adding the word "against."

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

THE SENATE

Wednesday, November 5, 2003

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

SENATORS' STATEMENTS

REMEMBRANCE DAY 2003

Hon. Pat Carney: Honourable senators, on November 11, Canada will observe Remembrance Day in many different ways in many communities. On Saturna Island, our services will be organized by the Lions Club and held in our island's only church, St. Christopher's Anglican Church. Nearly everyone on the island will come.

The service hardly varies from year to year. The church will be decorated with the last of the chrysanthemums from Pam and Harvey Janszen's garden. Pam is the President of the Lions Club this year, so she will give the lesson and conduct the prayers. Fellow Lion Tom Johnstone will give the invocation.

We will sing *God Save the Queen*. We will sing *Eternal Father, Strong to Save* and pray for those in peril on the sea. This year, in a daring innovation, we will replace *O God Our Help in Ages Past* with the more upbeat *Abide With Me*. There are not enough school children this year to sing *Where Have All the Flowers Gone*, but teenager Brianne Jones will recite two poems, *Poppy*, *Poppy* and *Remembrance Day*. Lois Buttery will play the organ.

Then we will place the wreaths and crosses at the foot of the altar, accompanied by an honour guard of children carrying flags. Since there are more flags than children, they will double up, giggling. I will walk up the aisle and place the Canada wreath. Veteran Jim Campbell, his medals pinned to his blue blazer, will place another, accompanied by children carrying the Navy's White Ensign. Military Cross winner Al Farrow will take his turn. Hugh Grasswick, a former Canadian Air Force pilot who served with the NATO Forces in Europe, will place a cross. His wife, Barbra Grasswick, will place the cross of poppies for the women in the Armed Forces and the war widows, if former WREN Margaret Fry feels too frail. Bert Whitehead usually does the honours for the Canadian Merchant Marine and U.S. veteran Darrell Jones will place a cross for Americans lost in conflict. The United Nations flag will be unfurled.

Then, when the church is crammed with flags we see only on Remembrance Day, we will tell stories of what Remembrance Day means to us. Former Lions president Paul White started the tradition when we could not find a priest or minister free to attend our services. In past years we have read letters written in First World War trenches. Ray Lindsay told about a visit to Vimy Ridge. Jon Guy recounted how his parents came to Canada

following the London blitz. Hugh Grasswick described the Silver Cross awarded to mothers whose children were killed in action. This year the storyteller will be Scott Lambert, whose wife Mei-man and daughter Jasmine will be in the audience.

Finally, Neal MacDonald will recite, from memory, the beloved poem *In Flanders Field*. After singing *O Canada!*, we will go down to the community hall where Marie Mackie and the Saturna Women's Club will serve scrumptious sandwiches, devilled eggs, butter tarts and tea. The day will be grey, and the last of the golden aspen leaves will drift to the forest floor. The wind will smell of the sea, but it never rains.

Honourable senators, in our major cities there will be cenotaph services, military bands and fly-pasts, but nowhere will there be more warmth, reverence and thanksgiving among Canadians than on Saturna Island and other small Canadian communities. Lest We Forget their losses, too.

SHAKE HANDS WITH THE DEVIL

EXCERPT FROM BOOK BY
GENERAL ROMÉO DALLAIRE (RTD.)

Hon. Laurier L. LaPierre: Honourable senators, General Roméo Dallaire has just published his book, *Shake Hands with the Devil*. I would like to read four paragraphs from his introduction:

It has been almost nine years since I left Rwanda, but as I write this, the sounds, smells and colours come flooding back in digital clarity. It's as if someone has sliced into my brain and grafted this horror called Rwanda, frame by blood-soaked frame, directly on my cortex. I could not forget even if I wanted to. For many of these years, I have yearned to return to Rwanda and disappear into the blue-green hills with my ghosts. A simple pilgrim seeking forgiveness and pardon. But as I slowly begin to piece my life back together, I know the time has come for me to make a more difficult pilgrimage: to travel back through all those terrible memories and retrieve my soul.

It is time that I tell the story from where I stood — literally in the middle of the slaughter for weeks on end. A public account of my actions, my decisions and my failings during that most terrible year may be a crucial missing link for those attempting to understand the tragedy both intellectually and in their hearts. I know that I will never end my mourning for all those Rwandans who placed their faith in us, who thought the UN peacekeeping force was there to stop extremism, to stop the killings and help them through the perilous journey to a lasting peace.

What I have come to realize as the root of it all, however, is the fundamental indifference of the world community to the plight of seven to eight million black Africans in a tiny country that had no strategic or resource value to any world power.

This book is a *cri de coeur* for the slaughtered thousands; a tribute to the souls hacked apart by machetes because of their supposed difference from those who sought to hang on to power. It is the story of a commander who, faced with a challenge that did not fit the classic Cold War-era peacekeeper's rule book, failed to find an effective solution and witnessed, as if in punishment, the loss of some of his own troops, the attempted annihilation of an ethnicity, the butchery of children barely out of the womb, the stacking of severed limbs like cordwood, the mounds of decomposing bodies being eaten by the sun.

This book is nothing more nor less than the account of a few humans who were entrusted with the role of helping others to taste the fruits of peace. Instead, we watched as the devil took control of paradise on earth and fed on the blood of the people that we were supposed to protect.

• (1340)

[Translation]

NATIONAL DEFENCE

LAUNCH OF INVISIBLE RIBBON CAMPAIGN

Hon. Lucie Pépin: Honourable senators, I seek leave to distribute some lapel ribbons. These are the Invisible Ribbons that represent military families. I want to speak about those families.

The Hon. the Speaker: Honourable senators, is leave granted?

Hon. Senators: Agreed.

Senator Pépin: Honourable senators, this is the week of the Invisible Ribbon campaign, a grassroots demonstration of support for Canadian military families. It is an initiative of the military community, which sometimes feels it has no voice and wonders whether it still has the support of the people of Canada.

This campaign helps us reaffirm our pride in our military, and is a way of showing the men and women in uniform, and their families, that Canadians recognize and support their vital contribution to this country and the world.

The clear plastic lapel ribbons, fastened with a Canadian flag pin, symbolize the "invisible uniform" worn by families who are part of the military way of life. Wearing them is a way of showing that we are friends of the Canadian Forces.

The sight of these ribbons helps boost the morale of military families, who are seldom in the limelight. They are always there, however, standing proudly behind their family members. Although they have not actually enlisted in the Forces, they might as well have.

[English]

Honourable senators, the Invisible Ribbons underscore that family of military members committed to the military way of life as the personnel who wear the uniform.

[Translation]

In fact, these families are just as devoted to the Canadian Forces. Their daily lives are largely shaped by the military environment, which demands of its members a disciplined lifestyle and a respect for hierarchy. As a result, these families live in unique conditions that sometimes take a heavy financial, professional, personal and emotional toll.

Moreover, we all recognize the burden imposed on families by the long missions of an army such as ours, which, despite being short of personnel, currently has 3,800 soldiers deployed in various operations around the world. I think it is completely legitimate to say of these family members that they are wearing "invisible uniforms".

[English]

Honourable senators, I hope that all members of this house and, indeed, all Canadians will join me in wearing an Invisible Ribbon to demonstrate that we very much appreciate military personnel and their families.

[Translation]

ROUTINE PROCEEDINGS

WESTBANK FIRST NATION SELF-GOVERNMENT AGREEMENT

TABLED

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table, in both official languages, two copies of the document entitled: "Westbank First Nation Self-Government Agreement between Her Majesty the Queen in Right of Canada and Westbank First Nation."

[English]

STUDY ON PUBLIC HEALTH GOVERNANCE AND INFRASTRUCTURE

REPORT OF SOCIAL AFFAIRS, SCIENCE
AND TECHNOLOGY COMMITTEE Tabled

Hon. Michael Kirby: Honourable senators, I have the honour to table the fourteenth report of the Standing Senate Committee on Social Affairs, Science and Technology, entitled "Reforming Health Protection and Promotion in Canada: Time to Act."

[Senator LaPierre]

The Hon. The Speaker: Honourable senators, when shall this report be taken into consideration?

On motion of Senator Kirby, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

NOTICE OF MOTION REQUESTING ADDITIONAL FUNDS

Hon. Tommy Banks: Honourable senators, I give notice that tomorrow, Thursday, November 6, 2003, I will move:

That it be an instruction to the Standing Senate Committee on Internal Economy, Budgets and Administration that, with respect to the Supplementary Estimates 2003-2004, the Committee include in the Senate's request to Treasury Board an amount of \$450,000 for Senate Committees; and with respect to the Main Estimates 2004-2005, the Committee include in the Senate's request to Treasury Board (i) an amount of \$4,000,000 for Senate Committees and (ii) an amount of \$400,000 for witnesses' expenses.

LEGAL AND CONSTITUTIONAL AFFAIRS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF LEGAL AID

Hon. George J. Furey: Honourable senators, I give notice that, at the next sitting of the Senate, I shall move:

That, notwithstanding the Order of the Senate adopted on October 7, 2003, the date for the report of the Standing Senate Committee on Legal and Constitutional Affairs regarding its study of the status of Legal Aid in Canada and the difficulties experienced by many low-income Canadians in acquiring adequate legal aid for both criminal and civil matters be extended from December 31, 2003 to March 31, 2004.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXTEND DATE OF FINAL REPORT ON STUDY OF INCLUDING IN LEGISLATION NON-DEROGATION CLAUSES RELATING TO ABORIGINAL TREATY RIGHTS

Hon. George J. Furey: Honourable senators, I give notice that, at the next sitting of the Senate, I shall move:

That, notwithstanding the Order of the Senate adopted on October 7, 2003, the date for the report of the Standing Senate Committee on Legal and Constitutional Affairs

regarding its study of the implications of including, in legislation, non-derogation clauses relating to existing aboriginal and treaty rights of the aboriginal peoples of Canada under s.35 of the Constitution Act, 1982 be extended from December 31, 2003 to March 31, 2004.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO DEPOSIT REPORT ON STUDY OF INCLUDING IN LEGISLATION NON-DEROGATION CLAUSES RELATING TO ABORIGINAL TREATY RIGHTS WITH CLERK OF THE SENATE

Hon. George J. Furey: Honourable senators, I give notice that, at the next sitting of the Senate, I shall move:

That the Standing Senate Committee on Legal and Constitutional Affairs be permitted, notwithstanding usual practices, to deposit its report on the implications of including, in legislation, non-derogation clauses relating to existing aboriginal and treaty rights of the aboriginal peoples of Canada under s.35 of the Constitution Act, 1982 with the Clerk of the Senate, if the Senate is then not sitting; and that the report be deemed to have been tabled in the Senate.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO DEPOSIT REPORT ON STUDY OF LEGAL AID WITH CLERK OF THE SENATE

Hon. George J. Furey: Honourable senators, I give notice that, at the next sitting of the Senate, I shall move:

That the Standing Senate Committee on Legal and Constitutional Affairs be permitted, notwithstanding usual practices, to deposit its report on the status of Legal Aid in Canada and the difficulties experienced by many low-income Canadians in acquiring adequate legal aid for both criminal and civil matters with the Clerk of the Senate, if the Senate is then not sitting; and that the report be deemed to have been tabled in the Senate.

STUDY ON NEED FOR NATIONAL SECURITY POLICY

NOTICE OF MOTION TO PLACE INTERIM REPORT OF NATIONAL SECURITY AND DEFENCE COMMITTEE ON ORDERS OF THE DAY

Hon. Colin Kenny: Honourable senators, I give notice that tomorrow, Thursday, November 6, 2003, I shall move:

That the seventeenth report (interim) of the Standing Senate Committee on National Security and Defence, entitled: "Canada's Coastlines: The Longest Under-Defended Borders in the World," tabled in the Senate on October 28, 2003, be placed on the Orders of the Day for consideration at the next sitting of the Senate.

[Translation]

• (1350)

OFFICIAL LANGUAGES

BILINGUAL STATUS OF OTTAWA— PRESENTATION OF PETITION

Hon. Jean-Robert Gauthier: Honourable senators, pursuant to rule 4(h), I have the honour to table, in this chamber, additional signatures to add to the 16,000 signatures already tabled, on a petition to declare Ottawa, the capital of Canada, a bilingual city, reflecting the country's linguistic duality.

The petitioners are calling on the Parliament of Canada to consider the following:

That the Canadian Constitution provides that English and French are the two official languages of our country and have equality of status and equal rights and privileges as to their use in all institutions of the government of Canada;

[English]

That section 16 of the *Constitution Act, 1867*, designate the city of Ottawa as the seat of government of Canada;

That citizens have the right in the national capital to have access to the services provided by all institutions of the government of Canada in the official language of their choice, namely English or French;

That Ottawa, the capital of Canada, has a duty to reflect the linguistic duality at the heart of our collective identity and characteristic of the very nature of our country.

Therefore, your petitioners ask Parliament to confirm in the Constitution of Canada that Ottawa, the capital of Canada, is officially bilingual, pursuant to section 16 of the *Constitution Act*, from 1867 to 1982.

QUESTION PERIOD

FOREIGN AFFAIRS

ZIMBABWE—DISCUSSIONS BETWEEN PRESIDENT OF SOUTH AFRICA AND PRIME MINISTER

Hon. A. Raynell Andreychuk: Honourable senators, there have been a number of issues in which Canada could and should exercise leadership with respect to stability and democracy and good governance. With the visit of President Mbeki from South Africa, I was pleased to see that the government indicated that it would take every opportunity to raise with the President our concern that South Africa take a more assertive role with the situation in Zimbabwe. What discussions were undertaken between the Prime Minister and President Mbeki with respect to the Zimbabwe situation?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, since I was not there and since the discussions between the Prime Minister and the President were private, I cannot possibly tell you the exact discussions that took place. All I can say is that discussions did take place.

Senator Andreychuk: Without disclosing the conversations, did the government follow through in expressing to the President the Canadian position that more action should be taken with respect to President Mugabe and Zimbabwe, particularly within the Commonwealth and the upcoming meetings?

Senator Carstairs: I can only tell the honourable senator that there were vigorous discussions between Mr. Mbeki and Prime Minister Chrétien. Zimbabwe was certainly one of the topics they discussed thoroughly.

SRI LANKA—PEACE TALKS— PLACING OF LIBERATION TIGERS OF TAMIL EELAM ON TERRORIST LIST

Hon. A. Raynell Andreychuk: Honourable senators, the situation in Sri Lanka is extremely troublesome. As the Leader of the Government in the Senate knows, Canada has played a role in attempting to bring the peace discussions to fruition. Canada has refrained from putting the LTTE, the Liberation Tigers of Tamil Eelam, on the terrorist list at the request of the Sri Lankan government in order that the peace talks could continue. There has been some question as to the appropriateness of that action, particularly when there is evidence from human rights groups and others that the LTTE persists in marginalizing and perhaps killing moderate northern Tamils and anyone who does not support the LTTE position. Perhaps it was appropriate that Canada not proceed with putting the LTTE on the terrorist list because peace talks seemed hopeful. We had Canadians involved in assisting and sharing information. However, we have the action taken by the President of Sri Lanka, which it would appear everyone has characterized as a personal feud, of cancelling or suspending Parliament for two weeks, throwing out some cabinet ministers, and really causing turmoil in Sri Lanka.

First, what is the position of the government with respect to this action by the President, which will jeopardize, in my opinion, the peace talks; and, second, will the government reassess its position on the LTTE?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the process of listing any organization as a terrorist organization is a long and clearly important role for the Government of Canada. I can assure honourable senators that as we have been using our legislation to name individual groups to this terrorist list, it is only done on the recommendation of CSIS and after a recognition that this properly fits within the ambit of our legislation.

Senator Andreychuk: Feedback from those involved in the peace talks, particularly the chief negotiator, indicated that Canada's role is extremely important and that Canada has an influence in the Sri Lankan peace talks because of the large Tamil community

in Canada and Canada's reputation. Will there be overtures to both parties in the peace process to indicate that there should not be any advantage taken by the LTTE in the peace talks as a result of the action taken by the President? As well, will we be conveying to the President our concern that the actions taken will jeopardize the peace talks?

Senator Carstairs: The honourable senator has made some suggestions, and I would be more than pleased to bring them forward.

VETERANS AFFAIRS

VETERANS INDEPENDENCE PROGRAM— ENTITLEMENT TO WIDOWS

Hon. Norman K. Atkins: Honourable senators, my question is to the Leader of the Government in the Senate. The theme for this year's Veterans' Week is "Canada's Forgotten War." It is a reference to the Korean conflict and the fact that Canadian veterans of that conflict have all but been forgotten.

Honourable senators, I fear that if the government continues to move at the pace it has been, the theme for next year's Veterans' Week will be "Canada's Widows." Similar to this year's theme, some veterans' widows have been remembered by this government, while other equally deserving widows, some 23,000 of them, continue to be forgotten.

How long is the government's review of the issue of veterans' widows without VIP benefits expected to last, and can we expect to have a decision on this matter by Remembrance Day—that is, Remembrance Day this year, not next year?

Hon Sharon Carstairs (Leader of the Government): Honourable senators, I can only assure the senator what I assured the senators who asked these questions yesterday, which is that the government is reviewing this file. When a decision is arrived at, the people of Canada, and most particularly the potential beneficiaries of this benefit, will be notified.

Senator Atkins: I expect you will hear the question every day until there is a decision from the government because these widows are very anxious to know what the government will do about this.

• (1400)

FISHERIES AND OCEANS

BRITISH COLUMBIA—RELOCATION OF ORCA WHALE

Hon. Pat Carney: Honourable senators, my question is addressed to the Leader of the Government in the Senate. It is simple. It seeks her help regarding the rescue of Luna, the lonely orca, who is stranded in Nootka Sound. Luna has many friends and I have e-mails from as far away as Texas on Luna's behalf. He is a young male orca who is alone in the sound.

We were pleased to learn of DFO Minister Thibault's decision last week to provide funding of \$135,000 for the Luna relocation

project. This is embarrassing to us because the Americans had already offered money and Canada refused. However, we are puzzled to learn that Minister Thibault has decided not to relocate Luna until the spring, which may be too late. I have been informed that the minister has not recalled his own scientific panel to discuss his decision and that the DFO minister's actions are in fact against the advice of the scientific panel, which has told the minister that Luna should be moved now, this fall or winter, when there is less boat traffic and fewer people around.

Senator Carstairs is not, as she says, responsible for all the decisions or non-decisions of her cabinet colleagues, but I have written to the minister and have had no reply. We would like to know who are the experts the minister has consulted regarding the timing of the Luna's relocation, how this decision was made and why he is not listening or consulting his own scientific panel?

I am asking for the help of the leader's office to get this information so that I can relay it to the Canadians who are concerned about Luna's fate.

Hon. Sharon Carstairs (Leader of the Government): The honourable senator congratulates the government in providing \$135,000 for the Luna project, which will match the US \$100,000 that has recently been announced, so there will be two streams of money. The scientific advice the Minister of Fisheries has received is that this is not the right time to do this.

The honourable senator asks who the scientific experts are that the minister has consulted, and I will try and find out for her. However, the information I have been given is that the Minister of Fisheries has received scientific advice indicating that Luna should be reunited with his pod in the spring to ensure maximum success.

Senator Carney: I thank the senator for her answers.

The heart of the problem is that we do not know who these scientific advisers are because the minister's own panel, which includes Dr. Paul Spong of OrcaLab and other distinguished Canadians, have not been consulted. Whoever is giving this advice is not the minister's own scientific panel.

I would also ask that the leader take this matter up with Environment Minister Anderson's office, which has not replied either. I have written to the minister to say that it is on his head if anything happens to Luna, who is so lonely that he is chasing floatplanes and is being abused by tourists and visitors to Gold River. We have been frustrated at the lack of answers.

I would also like to take this opportunity to thank Senator Carstairs and her office for their help in answering these questions, finding this information and helping us convey our concerns to her colleagues. I very much appreciate what she and her staff have done.

Senator Carstairs: I thank the honourable senator for her kind comments about the staff. They are extraordinarily hard working and feel that their purpose is to represent the interests of not just the leader in the Senate but all honourable senators.

As to the scientific experts, I do not know who they are, but I will seek to find that out this afternoon and get that information to the honourable senator as quickly as I can.

NATIONAL DEFENCE

PURCHASE OF EXECUTIVE AIRPLANES

Hon. Gerry St. Germain: Honourable senators, my question is to the Leader of the Government in the Senate and relates to the Prime Minister's jets. On April 8 federal officials hurriedly flew to St. Louis in one of Bombardier's private jets. The purpose of the trip was to complete the purchase of two Challenger jets from Bombardier for the Prime Minister. The cost of the jets was \$100 million and the contract was untendered. The cost of the trip for the federal officials was \$17,000, an \$8,000 savings for airplanes that usually rent for \$25,000. Federal officials have explained that the government aircraft was not available, hence the use of the private jet.

A federal official further explained, honourable senators, that the reduced cost of the trip was good value for the taxpayer and that the use of the aircraft in no way influenced the aircraft purchase, as it had already occurred. However, an official for Public Works pointed out a few days before the flight that his department does not allow government officials to ride on suppliers' aircraft.

If the purchase of the aircraft had already occurred, what was the hurry in getting to St. Louis? Why did the officials not just wait until the government aircraft became available, seeing as they had bought it already?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, that is a very specific question. I certainly do not sit here with the answer, but I will seek to obtain it for the honourable senator.

Senator St. Germain: Honourable senators, many officials — 10, I believe — went to St. Louis for the purchase that had already been made. Why? Also, did the officials not check out the availability of commercial flights and why were they not used? I gather the minister will have to seek that information as well, if she can.

Senator Carstairs: I will do my best.

HEALTH

PHYSICIAN GRADUATION—SUFFICIENT POSITIONS FOR INTERN-RESIDENT TRAINING

Hon. Wilbert J. Keon: Honourable senators, the leader will recall last week that I asked her about the problem of a lack of positions for medical graduates. Concern continues to be

expressed. Dr. Sunil Patel, President of the Canadian Medical Association, just pointed out yesterday that he felt the federal government should play a leadership role in this matter because provinces are unable to really deal with it on an individual basis. Has any progress been made in bringing people together to try to do something about this?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, with the greatest respect to Dr. Patel, I do not think he understands the constitutional relationships between the federal department of health and provincial departments of health. The reality is that medical schools fall under the ambit of the provinces. Residency positions, which come as a direct result of the graduation from one of those schools, or from internship programs, also fall totally within the ambit of the provinces. The federal government is well aware of the physician shortage generally and is well aware of the lack of residency positions. They have been negotiating on an ongoing basis for money that has been specifically earmarked for professional education with the provinces; however, I have to say that progress is very slow. The cooperation of all 10 provinces is required, and negotiations are not moving nearly as quickly as the Government of Canada would like.

Senator Keon: Honourable senators, I believe Dr. Patel really does understand the problem, this area being the responsibility of the provincial governments, but the problem is that they seem incapable of dealing with this issue because the ball is just bouncing from province to province. Perhaps somehow this item could be placed on the agenda of federal-provincial ministers. With what is coming up concerning the government, I do not know that the ministers will be meeting. However, perhaps the matter could be discussed at a high-level meeting of bureaucrats because the reality is that there is not very much money involved. With a few agreements between the larger provinces in particular, and a few adjustments, the problem could be solved.

Senator Carstairs: Honourable senators, let me reiterate that the federal government has put money aside. They want the provinces to access that money but cannot do so until an agreement has been reached. Part of the problem, I think it is fair to say, is that a significant number of provincial health ministers have changed in a very short period of time. We have had eight provincial elections, the result being that many governments have been defeated and brand new ministers are occupying their departments of health. As a result, although this issue is on the agenda, it is clearly not sufficiently high on the agenda for genuine progress to be taking place.

• (1410)

CITIZENSHIP AND IMMIGRATION

NEW REGULATIONS FOR IMMIGRATION APPLICANTS— EFFECT ON CONSULTANTS

Hon. Donald H. Oliver: Honourable senators, my question is for the Leader of the Government in the Senate and deals with the regulations for immigration consultants.

Last Friday, Citizenship and Immigration Minister Denis Coderre announced that the federal government would take steps to regulate immigration consultants. The minister said that a regulatory agency will be in place by April of 2004 and that only licensed consultants will be able to do business with the department.

This is welcome news as there have been many cases recently involving immigrants who have been cheated by dishonest consultants, which has damaged Canada's reputation in the process. However, unless potential immigrants in other countries are made aware of these regulations, they may still be deceived. Immigrants may be cheated out of earnings in an effort to come to our country.

Have our embassies and high commissions around the world been instructed as to how they should inform potential immigrants about these new regulations?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the regulatory regime is not yet in place and will not be put in place until April 2004. No, the embassies have not been informed. The regulatory regime, once it is in place, will be set up in such a way that the embassies are not only informed, but they can also, in turn, inform all those potential applicants.

Senator Oliver: Honourable senators, the minister also said that Canadian-based immigration consultants who defraud immigrants would face fines and possibly charges under the Criminal Code. Can the Leader of the Government in the Senate tell us how foreign-based immigration consultants, living outside of Canada, would be dealt with under these new regulations?

Senator Carstairs: Honourable senators, I must repeat my answer: The regulations have not yet been proclaimed. They are not in place. I think the honourable senator shares exactly the same concern I do, which is that those who are located outside of Canada may be able to continue to hoodwink — because that is what has been happening — unsuspecting residents and citizens of other countries.

I will certainly take our combined concern forward that the embassies will have to take extra special care to ensure that applicants know that licensed immigration consultants are the only ones with whom they should deal.

FOREIGN AFFAIRS

UNITED STATES—CANADIAN CITIZEN DEPORTED TO SYRIA—REQUEST FOR INQUIRY

Hon. Marcel Prud'homme: Honourable senators, yesterday — and rightly so — concerning a question that I had about Mr. Arar, the minister said: "Cabinet was meeting at the time of the press conference, so none of us were able to watch it." Since yesterday, however, the news is getting worse and worse. Will the

government reconsider its decision of today not to allow a public inquiry on the question concerning the deportation from the United States to Jordan and then to Syria of a Canadian citizen?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the honourable senator has actually put his finger on the problem. The deportation did not take place in Canada; it took place in the United States. The deportation was to Jordan in the first instance and then to Syria. We have no control, as Canadians, over the activities of the United States Citizenship and Immigration Service or that of Jordan or Syria.

Mr. Graham called in the Syrian ambassador yesterday to indicate our grave concern with regard to the treatment that Mr. Arar has indicated he received at their hands. Allegations have been made in the United States that perhaps information may have been provided from Canada. Certainly that will be a part of the Public Complaints Commission investigation. So far, however, I must tell the honourable senator that although these allegations have been made, no one has identified a Canadian official who presumably, according to the allegations, gave that information. It is making any kind of investigation somewhat difficult.

Senator Prud'homme: Honourable senators, I have a supplementary question on this item. There is something I have tried to understand all my life, and that is consistency. On the one hand, we say that Iran, Syria and North Korea are rogue states with no respect whatsoever for human rights. Yes, the minister is right: This saga started in the United States of America, yet this person is a Canadian citizen. On top of that, he is revealing to us that there is another Canadian citizen who is in an absolutely desperate situation. He may be right; he may be wrong. I do not trust our approaching the United States and saying, "It started here. Therefore, there should be an inquiry here."

Just imagine the reverse. If this had been a citizen of the United States of America who had been deported from a Canadian airport to Jordan and then to Syria, where he was maltreated, according to his statement — and I have no reason to believe otherwise, although I do not want to live forever saying "until proven otherwise" — the United States of America would have come down hard on us. We will never know.

Honourable senators, I know that the Senate and House are about to adjourn, but this matter will not die. Canadians want to know the kind of protection they will have from their government.

The Canadian passport is not something that was good only during referendum days in Quebec in 1995, when with great passion and emotion —

The Hon. the Speaker: Honourable senators, I interrupt briefly to point out that only four minutes are left in Question Period. We have several honourable senators' questions waiting to be heard.

Senator Carstairs: Honourable senators, I agree that there is a serious concern here. Clearly we have a situation in which a Canadian citizen was deported from the United States and not returned to the country under whose passport he was travelling, apparently with no consultation with the Canadian consul in New York and with no lawyer being able to provide advice. He was taken from the United States to a country other than the country for which he carried a passport.

This is a serious concern. If information were sent, it would have been sent from one of two agencies. That is why the Public Complaints Commissioner is investigating this complaint.

We have had allegations that some information came from Canada. Who gave that information? What was that information? We need to allow the Public Complaints Commissioner to do the job of that office. Following that investigation, we could make a determination of whether further investigation is needed.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, this is a very important matter. Perhaps all honourable senators will want to take note.

The Public Complaints Commission process is limited to only employees under the RCMP Act. Therefore, there is no way that the government can, once again, avoid an inquiry into this matter.

The minister has just told honourable senators that it may involve a second agency other than the RCMP, because the RCMP Public Complaints Commission has absolutely no jurisdiction to enquire into the conduct of anyone who is not employed under the RCMP Act — that means CSIS, Foreign Affairs, or anyone else.

We saw the government try to avoid an inquiry on the APEC scandal by saying that the RCMP Public Complaints Commission process should be allowed to unfold. Only employees under the RCMP Act can be investigated by that process.

• (1420)

Why is the government misleading Canadians by suggesting that an inquiry is ongoing when it knows full well that the only inquiry that can be conducted by the RCMP Public Complaints Commission is one which relates to employees under that act?

Senator Carstairs: Honourable senators, no one is denying that. That is exactly what that act requires. We also, of course, have the Security Intelligence Review Committee that can oversee the role of CSIS in this matter.

What we need to know, and I understand this is being sought, is the exact nature of that information and who provided it.

SOLICITOR GENERAL

MISSING NUCLEAR MATERIAL FROM MCMASTER UNIVERSITY

Hon. J. Michael Forrestall: Honourable senators, there is some suggestion from what we believe are somewhat reliable sources

that an amount of nuclear material — some 82 to 89 kilograms — from the medical facilities at McMaster University cannot be unaccounted for. Is an investigation into the missing nuclear material at that university underway?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I do have no information about any material that may have gone missing at McMaster University.

Senator Forrestall: I would appreciate it if the leader would request her staff to bring any information regarding this situation forward.

I would add that World Net Daily, an electronic news site, has posted a story about a possible al-Qaeda radiation bomb plot against the United States, involving a man named Adnan El Shukrijumah, who was allegedly spotted at McMaster University. Would the leader join that with her earlier inquiry?

Senator Carstairs: Obviously any loss of any form of nuclear radioactive materials is a very serious matter. I would be pleased to combine both questions and try to get answers as quickly as possible.

POINT OF ORDER

Hon. Pat Carney: Honourable senators, on a point of order, I have received on my desk a clear plastic lapel ribbon which is part of The Invisible Ribbon Campaign. As part of the campaign it is stated that wearing a ribbon shows members of the military and their families that you value their contribution to their country and the world.

I have no indication of where this came from, although I did receive a letter in my mail, dated June 12, referencing this ribbon. I am sure it is well intentioned, but because of the proliferation of items that are sent to us, I would ask His Honour to ensure that, when things are placed on our desks, we are informed about who sent them. Otherwise I will deluge the Senate chamber with a Kermode bear pin for the 2010 Olympics.

The Hon. the Speaker: Honourable senators, the distribution of items in the chamber can only be done with leave of all senators. Senator Pépin made a statement under Senators' Statements regarding the pin. During the course of that statement, she asked for and received leave to distribute the pins. That is how it got there.

[Translation]

NATIONAL ANTHEM ACT

BILL TO AMEND—REPORT OF COMMITTEE

Leave having been given to revert to Presentation of Reports from Standing or Special Committees:

Hon. Rose-Marie Losier-Cool, chair of the Standing Senate Committee on Official Languages, presented the following report:

Wednesday, November 5, 2003

The Standing Senate Committee on Official Languages has the honour to present its

SIXTH REPORT

Your Committee, to which was referred Bill S-14, An Act to amend the National Anthem Act to reflect the linguistic duality of Canada, has, in obedience to the Order of Reference of Tuesday, June 17, 2003, examined the said bill and now reports the same without amendment.

Respectfully submitted,

ROSE-MARIE LOSIER-COOL
Chair

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

Senator Losier-Cool: Honourable senators, at the next sitting of the Senate.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Hon. Marcel Prud'homme: No.

Motion agreed to on division.

On motion of Senator Losier-Cool, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

[English]

CANADA-UNITED STATES INTER-PARLIAMENTARY GROUP

FORTY-FOURTH ANNUAL MEETING,
MAY 15-19, 2003—REPORT TABLED

Leave having been given to revert to Tabling of Reports from Inter-Parliamentary Delegations:

Hon. Jeremiah S. Grafstein: Honourable senators, I have the honour to table the report of forty-fourth annual meeting of the Canada-United States Inter-Parliamentary Group, held in Niagara-on-the-Lake, Ontario, from May 15 to 19, 2003.

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—MESSAGE FROM COMMONS—
MOTION IN AMENDMENT—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C.:

That, with respect to the House of Commons Message to the Senate dated September 29, 2003 regarding Bill C-10B:

(i) the Senate do not insist on its amendment numbered 2;

(ii) the Senate do not insist on its modified version of amendment numbered 3 to which the House of Commons disagreed;

(iii) the Senate do not insist on its modified version of amendment numbered 4, but it do concur in the amendment made by the House of Commons to amendment numbered 4; and

That a Message be sent to the House of Commons to acquaint that House accordingly,

And on the motion of the Honourable Senator Watt, seconded by the Honourable Senator Adams, that the motion, together with the message from the House of Commons dated September 29, 2003, regarding Bill C-10B, to amend the Criminal Code (cruelty to animals), be referred to the Standing Senate Committee on Legal and Constitutional Affairs for consideration and report.

Hon. Anne C. Cools: Honourable senators, I rise to speak in support of Senator Watt's amendment to the motion of the Honourable Senator Carstairs. Senator Watt's amendment to her main motion essentially asks that the message from the House of Commons, dated September 29, regarding Bill C-10B, and Senator Carstairs' motion, itself, be both referred to the Standing Senate Committee on Legal and Constitutional Affairs for consideration and report.

Honourable senators, I rise to support that amendment with great enthusiasm. I would also like to thank Senator Watt and Senator Adams for their persistence, commitment and devotion in their work on Bill C-10B, and to tell honourable senators why I support referring this question to the committee.

• (1430)

Honourable senators, the Standing Senate Committee on Legal and Constitutional Affairs, under the chairman, Senator Furey, has studied this issue for close to a year now. However, the question that the committee must now look at is an extremely important one because Senator Carstairs' motion asks the Senate not to insist on its amendments to Bill C-10B.

Honourable senators, what the committee simply has to examine is that the Senate message that was sent to the Commons some weeks ago, the message that originated in Senator Furey's committee, is more than just a simple message. That message was an order of the Senate.

Honourable senators will remember that, back in June, the then Commons message and Senator Carstairs' motion were then referred to this the very same committee. In that committee on June 12, Senator Carstairs' motion was overruled. It was put before the committee and voted down. Then the committee reported on June 12 — having defeated Senator Carstairs' motion — with a recommendation to the Senate that a new message be sent to the House of Commons, and set out the new contents of the message. This committee report was adopted on June 19 in this chamber, and then the message was sent.

What we are dealing with here in Senator Carstairs' motion, her proposal rescinding a Senate decision — is an order of the Senate. This is a fact that has not been grasped and gleaned by many. What is required, honourable senators, under normal circumstances — and I hope that Senator Furey is paying close attention — is that the repeal of any order of the Senate would normally proceed under Senate rule 63(2), which says:

An order, resolution or other decision of the Senate may be rescinded on five days' notice if at least two-thirds of the Senate present vote in favour of its rescission.

Honourable senators, this matter is a bit more complicated than it appears on the face of things. Senator Carstairs' motion is in fact asking the Senate to change its position, to reverse itself. When Senator Furey spoke some weeks ago on October 7 on this very matter, Senator Carstairs' motion, as chairman of the committee he upheld the position of the committee as adopted by the Senate.

What has happened here is that many senators have not noticed that the order of the Senate that Senator Carstairs is asking for is an order that rescinds a previous Senate order of June 19. That particular hurdle of rescinding a Senate order has to be navigated.

I am pleased to have the opportunity to support Senator Watt in referring this message and motion to the committee so that Senator Furey's committee, which is seized of the question, will have the opportunity to sort out some of the questions that have now become confounded. Perhaps it will be able to make a recommendation to the Senate as to how to proceed, because the way that Senator Carstairs has proposed is not consistent with the rules of the Senate in respect of the rescission of Senate orders.

Having said that, honourable senators, I am pleased to lend my support to Senator Watt's amendment.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I move the adjournment of the debate.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I protest to the adjournment of the debate, and I would like to know the justification for it.

I know it is not debatable, but this issue has been before us now since October 2. I do not understand why the government's own recommendation to accept a message from the House of Commons is not being decided upon immediately. Other bills that the government supports are being forced on us. Why has this one, which has been debated ad nauseam and has gone back and forth to the House of Commons at least twice, given such treatment? I protest. I will not accept that at all — unless I can be given a valid reason.

The Hon. the Speaker: I guess it is a matter of house business. There could have been an exchange.

Senator Carstairs: Let me say to the honourable senator that Senator Cools has raised a point today on this particular item that we have never considered. She seems to think that I am in violation of the rules of the house. I do not think I am, but I would like to have the opportunity to review, and I am quite prepared to speak to this matter tomorrow.

The Hon. the Speaker: It is moved by the Honourable Senator Carstairs, seconded by the Honourable Senator Robichaud, that further debate be adjourned. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Yes.

Senator Lynch-Staunton: No.

The Hon. the Speaker: Those in favour of the motion to adjourn will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Those opposed to the motion to adjourn will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators. We will have a one-hour bell, unless there is agreement for a shorter bell.

Some Hon. Senators: Agreed.

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, if there is agreement that I speak for the whip, I could perhaps come to an understanding with my honourable colleague from the other side that we would agree to a half-hour bell.

The Hon. the Speaker: Is it agreed, honourable senators, that the bells will ring for 30 minutes?

Hon. Senators: Agreed.

The Hon. the Speaker: The bells will ring for 30 minutes, at which time the vote will take place.

• (1510)

Motion agreed to and debate adjourned on the following division:

YEAS
THE HONOURABLE SENATORS

Bacon	Kolber
Banks	Kroft
Bryden	LaPierre
Callbeck	Lavigne
Carstairs	Lawson
Chaput	Léger
Christensen	Losier-Cool
Cools	Maheu
Corbin	Massicotte
Cordy	Merchant
Day	Milne
De Bané	Moore
Downe	Morin
Fairbairn	Pearson
Finnerty	Phalen
Fraser	Plamondon
Furey	Poulin
Gauthier	Poy
Grafstein	Ringuette
Graham	Robichaud
Harb	Roche
Hervieux-Payette	Rompkey
Hubley	Smith
Joyal	Trenholme Counsell
Kenny	Wiebe—51
Kirby	

NAYS
THE HONOURABLE SENATORS

Andreychuk	Keon
Angus	Kinsella
Atkins	Lapointe
Beaudoin	LeBreton
Biron	Lynch-Staunton
Buchanan	Nolin
Carney	Oliver
Chalifoux	Prud'homme
Cochrane	Rivest
Comeau	Robertson
Di Nino	Sibbeston
Doddy	Sparrow
Forrestall	St. Germain
Gill	Stratton
Gustafson	Tkachuk
Johnson	Watt—33
Kelleher	

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

PARLIAMENT OF CANADA ACT

BILL TO AMEND—THIRD READING—
DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C., for the third reading of Bill C-34, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

Hon. George J. Furey: Honourable senators, this matter was adjourned in my name. However, I understand that Senator Grafstein will speak today and I wish to wait until tomorrow to make my few remarks.

Hon. Jeremiah S. Grafstein: Honourable senators, some senators on this side have heard me before, but it is important, as a member of the Standing Committee on Rules, Procedures and the Rights of Parliament, that we spend a few moments —

Senator Lynch-Staunton: Order!

Senator Robichaud: Order!

The Hon. the Speaker: Honourable senators, some honourable senators are drawing to my attention that it is very noisy in the chamber and we have a important item, as always, to debate. I would ask honourable senators who have conversations to please carry them on outside the chamber.

Senator Grafstein: Honourable senators, I thank you for your indulgence. As a member of the Standing Committee on Rules, Procedures and the Rights of Parliament, which has been seized with this matter for some time, I think that it is important for all senators on both sides to have a clear understanding of why, as a member of the committee, I took the positions that I did on clause-by-clause consideration last Friday.

It is important to begin by looking at the curious and rather unprecedented legislative history of Bill C-34. It does not have, as was suggested, a long and discursive history. In fact, the history of this bill is rather short as it relates to the precision of the rules and the changes to our conduct that are being requested in the bill. It is confusing because of the procedure that we adopted to deal with this measure.

Honourable senators will recall that we had before us the Milliken-Oliver report, which was in the reference to the committee. At the same time, however, we did not have a draft bill, as has been suggested, but only mere proposals. The Leader of the Government in the other place has told us, and those who were the proponents of the bill in its present form on this side have echoed this, that all of the recommendations of that committee in the eighth interim report were adopted. In effect, we were told that the Milliken-Oliver report was incorporated in the bill. However, we have heard from Senator Oliver that that was not the case, and that the heart and core of his recommendations were not accepted.

Let us turn to the interim report to see if the committee that opined on the proposals in the Milliken-Oliver report did incorporate the recommendations. I am confused by the debate thus far in the house and that is why I take such a position. I am hopeful that those who support the bill in this particular form will clarify this for me — that the bill incorporates all of the recommendations of the report.

I would ask honourable senators to turn to the report, keeping in mind that this is not a report in the traditional sense. Rather, the report is a series of recommendations that form an interim report because the bill was not in fact proposed legislation; it was actually made up of proposals that were then drafted into a bill. Our opinion and the heart of the bill did not change. What did the committee unanimously say in its report? I turn to that report, which is in our excellent briefing book, with which we were provided, that is entitled "Government Ethics Initiative." Again, keep in mind that this is not a bill but an initiative.

I turn now to the interim report of the Standing Committee on Rules, Procedures and the Rights of Parliament. The committee's order of reference is to consider proposals to amend the Parliament of Canada Act and the Milliken-Oliver report. We are also asked to take into consideration the code of conduct at the U.K. Parliament, on which we had extensive evidence. The committee was then asked, in conjunction with the review, to take into consideration the *Rules of the Senate*, the Parliament of Canada Act, the Criminal Code, the Canadian Constitution, the Common Law and then to make recommendations required for the adoption and implementation of a code of conduct.

I had no objection to a code of conduct. As a matter of fact, our code of conduct has been evolving because we have had problems in the Senate. In my experience, we have had one major and one not-so-major problem in the past 20 years. The rules were changed to deal with those two situations. They were resolved fairly and appropriately under the *Rules of the Senate*.

The committee's report also stated that we are required to make recommendations for the adoption of a code of conduct and for such resources that are necessary to do this. The report then makes its first recommendation in paragraph 2, which states:

While considerable work remains to be done, the members of your Committee believe that it would be useful for our colleagues in the Senate and others to have an idea of our current thinking...

• (1520)

We then turn to the heart of the recommendations in paragraph 3 on page 3, which says the following:

A Senate ethics officer shall be appointed after agreement of the leadership of the recognized parties in the Senate, followed by a confirming vote in the Senate.

Senator Oliver has said, the opposition has said, and my colleagues Senators Joyal and Banks have said that that is not so. It is not by agreement, as the committee recommends, unanimously. It is by consultation and an affirming vote. In other words, the heart of that recommendation has been ignored.

Honourable senators can fairly opine on this question: Why is it that there is a need for a so-called ethics officer because of the public debate on the other side? What is the heart of the heart of the debate in the media and in the public about the officer on the other side? That is, he is not independent of the Governor in Council. Therefore we now have a recommendation, and that is the clear and present danger on the other side, and that clear and present danger is now being imported into our rules or our constitution without any public evidence about any misconduct on the part of any senator in this room.

The report then goes on to say, on this very narrow point, unanimously, on page 8:

...it is unacceptable for the Governor in Council to appoint the ethics officer in the manner proposed by the draft bill. There must be agreement of the leaders of the recognized parties in the Senate, followed by a confirming resolution of the Senate itself. Only in this manner —

— says the unanimous committee report —

— can the incoming ethics officer be assured that he or she has the Senators' respect and support.

Then, in conclusion, on page 10, the report says:

Final decisions must rest with the full Senate. We believe such a system will best serve the public interest.

We then turn to the bill itself. In the bill itself we turn to this officer. I do not like the words "ethics officer," and I have stated why I do not like the words "ethics officer," but it is in the bill. I do not like those words, honourable senators, because of the evidence by Mr. Audcent, one of our officers, who told us in the committee that ethics are beyond the law, vague and beyond the law. I add the word "vague."

Honourable senators, I like the rule of law. I like rules that are clear and understandable, and I feel that is what the public deserves. When we talk about ethics, which is morality, which is above and beyond the law, we establish such standards and high expectations that no individual senator will ever be able to achieve. Then let us be realistic. Let us be fair, let us not be hypocritical and let us not be unethical. Let us set established rules that we can clearly understand and the public can clearly understand, and no senator has objection to that.

Turning back to the argument in our committee report, however, we find that the ethics officer will be appointed after consultation by a resolution of both Houses, which is essentially the Governor in Council. By the way, if there is a deadlock, as Senator Bryden suggested and Senator Kinsella concluded, the officer is appointed by the Governor in Council alone. No resolution. If the officer is removed, it is by the Governor in Council on an address, and the Governor in Council pays his bill. However, the public argument for an ethics counsellor has been for an independent officer, independent of the executive.

Honourable senators, I am therefore confused. I have been told over and over again by every proponent of the Senate as a chamber of sober second thought, that we must be good legislators. However, the way in which we are good legislators is that we must attend committee meetings and we must carefully look at the legislation in its final form and then, after reasoned judgment and witnesses, come to a conclusion. The committee did that in April of this year.

We then find out, to my amazement, that we now go to a short debate. We have this very invidious intervention by closure at committee stage, when we have only had the bill for a day or two or three to deal with these important points. This is just one of the many important points. I will come to others in a moment. This is the heart of the report, unanimously approved by both sides, everyone is comfortable with it and then, some months later, there is a different application and we are told that in two or three days we must pass this bill.

Then we go to the next committee meeting for clause-by-clause study and the opposition is not there. I will not speak for the opposition, but on the record in committee I noted that I was very uncomfortable in a democratic legislature, based on democratic principles and the rule of law, to have to deal with the constitution of this chamber in the absence of the opposition. Why, based on what they have told us, were they absent? One reason I know is factual. I cannot opine on the others, which were: We wanted other witnesses, which the committee report recommended. We need other witnesses on a whole raft of matters, such as the Access to Information Act, the Privacy Commissioner, the Federal Court Act — how do all these things apply? There was no evidence of these clauses and issues. There was sketchy evidence of only one issue, and the last witness — if you can believe it — called to support the bill is a distinguished former officer of this Parliament who had not even read the bill.

Yet we are told, when we seek to get witnesses — which we did, to support and help the government and us to understand the ramifications of this bill, which I do not fully understand even though I have read it many times — that we cannot have witnesses. Why? When we call these witnesses, distinguished academics, on a Wednesday or on a Thursday, they have lectures and they cannot attend. Will they attend? Yes, they will, the following week, but we are told we do not have time.

I conclude that this rush to judgment makes me very uncomfortable. However, I do not think it is appropriate to say that the Milliken-Oliver report supported this legislation, because it does not. It is to ignore the heart of the heart of that recommendation. Why that recommendation? It is important for all honourable senators to understand why that recommendation. One reason — a reason I have already mentioned — is the public reason, that the public wants independence, free and clear of the executive.

Fair enough, and by the way, we did have a bill in this house, which was my private member's bill, where I had a similar problem. Honourable senators will recall that I wanted to establish a parliamentary Poet Laureate. I decided when I initiated the bill that the only way I could get it through both Houses was if it was free and clear of the executive. The bill was passed. It establishes an independent parliamentary Poet Laureate and it is based on a resolution after the Speakers on both sides concurred, independent of the executive, and it will be very successful.

We have a practice of doing things here that are free and clear of the executive. Why? For the second reason, and the most important reason. I resent — and I will say it again — I resent anyone saying that this is an arcane reason. It has been suggested that this constitutional reason is arcane. What is the constitutional reason? The constitutional reason is the separation of powers.

Honourable senators, the heart of the heart of the bill is that recommendations have been ignored by the unanimous committee unanimously, and I share that discomfort. I then say to myself: Let us look further. Are there other problems in the bill? There are. We have not looked at the immunities of the bill. We have not looked at the fact that in the bill the House has provided for itself confidentiality for the commissioner as it relates to members and to cabinet ministers, but not in our bill. We have removed the implications of the bill from the Privacy Commissioner and the access to information. I am not clear about what that means. We had no or very little evidence on those questions that the committee wanted.

I want to do this right. I want to do it lawfully. I want to follow Senate practices and end up with a bill that we understand, we can live with, and one that is in the public interest.

The Hon. the Speaker: Honourable Senator Grafstein, I am sorry to advise that your time has expired.

Senator Grafstein: May I have leave to continue?

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Grafstein: I am a lawyer. I am a Q.C.

Senator Lynch-Staunton: That is okay, we understand.

Senator Stratton: We forgive you.

• (1530)

Senator Grafstein: I have made the study of the law my life's practice. I love the law and I love the rule of law. I have learned — and I think that every senator who is a member of the bar will agree with this — that when we examine the law, the law acts best when it solves specific problems, one at a time. That is the glory of the common law. We do not come up with ethical problems or theoretical problems; we solve them one at a time and then we codify those views. That is the heart and the joy of the common law.

We have a *lex parliamenti* common law in our rules. We have solved difficult problems one at a time and, at the same time, we have sustained the rights, the privileges and the immunities of each and every senator as we have done it, carefully and cogently.

I urge honourable senators to give us a little more time — not much more time — to examine the ramifications of this bill and to renovate the bill so that we can finally say to those who feel that there is a huge and pressing need to do so that we have dealt with these problems carefully, consistently and cogently. In that way, I think we can not only enhance the work of the Senate but also modernize the Senate in a careful and cogent way. Caution and second sober thought, that is all I ask.

Some Hon. Senators: Hear, hear!

Hon. Gérard-A. Beaudoin: Honourable senators, I would like to know a bit more about the honourable senator's opinion on the separation of powers. I strongly believe in the separation of the three powers, except that in our parliamentary system, inherited from the United Kingdom, the legislative and the executive is more interrelated than in the American Constitution.

Having said that, the question is much more important now in Great Britain, where Tony Blair has set aside the famous officer who was, at the same time, part of the executive, the legislative

and the judicial power, namely, the Lord Chancellor. It is fantastic! It is the best thing that he has done for many months, in my opinion. I am glad to see that.

If an officer — and, if the honourable senator does not like the word "officer", I will use another term, any term he wants — if this office is set up or created, then the person who holds that office will be, in a certain way, part of the executive. I would like to know the honourable senator's opinion. If we create a commissioner or an ethics commissioner, we must define his powers; we must outline them in the bill. He will act a bit like a judge. He or she must be impartial, and we must clearly define this position. Why has the honourable senator come to the conclusion that this is against the separation of powers? I think it is.

Senator Grafstein: First, it is not only my opinion, it is also the honourable senator's opinion. Furthermore, all of the members of the committee unanimously agreed with our view that there should be a separate officer. This principle was accepted by the other side. However, the mechanics of the detail were that the position was to be separate in its true sense, which was by resolution after agreement by the leaders on this side. The executive really had nothing to do with it. That was the honourable senator's recommendation and my recommendation to the committee; I agree with that. The committee agreed. I agree with what we talked about. That was based on the evidence. However, the honourable senator now raises another question, which is a theoretical one, and I will deal with it briefly.

If we examine the origins of our Confederation compared to the British model and the American model, honourable senators will see that we were different. The Fathers of Confederation had before them the Civil War. If you read the debates of the Fathers of Confederation, it is clear that they wanted, somehow, to end up with a model that was different from the Parliament in Britain. One of the key differences was the courts. The Fathers of Confederation, quite wisely, decided that they would go more the American way and separate the courts. Hence, the courts were separate from the Senate or the House of Commons, although the appeals ultimately still went to the Privy Council Office. It took us to 1931 before we finally ensured that appeals from our courts were, in effect, before the Supreme Court.

Senator Beaudoin: It was 1949.

Senator Grafstein: I am sorry. The honourable senator is quite right. There was another bill establishing the Supreme Court in about 1908 and this move was an evolution of that. Thank you for that correction, senator.

We followed a different path than that of the United Kingdom. We were more closely concerned with the independence of the judiciary because of the influence of the American system, but we did not buy the American system. We took the responsible government route, but the judiciary was to be sacrosanct and separate. I thought that was a good thing. That is one of the problems that we have here before us: We want to ensure that the vision of the Fathers of Confederation is maintained when it comes to the constitution of the Senate.

Senator Beaudoin: Obviously, in our system that we inherited from Great Britain, the judicial power is very independent. Once they are appointed, we have many cases to the effect that they are impartial. There is no problem with that. The Supreme Court is clear, and that is our system. This is why, on our side, we have been saying for a few days now that we are going pretty fast with this bill because we are innovating now. We are creating something based on the rules and something that is new in our system.

However, I still think that it is possible to do that. It is for that reason that we should do it. I agree with the honourable senator that we should take the time to think about it and to be quite sure that this commissioner will have adequate powers to do his job; but it takes time to do that.

Someone asked me the other day "Do you have the names of expert witnesses?" I must confess that we do not have many experts in that precise field. This is not an ordinary case in the Supreme Court; it has to do with the structure of our system and the separation of the three powers. I agree with the honourable senator that we should be quite sure of what we are doing in this case.

I do not object to such a commissioner; I think it is a good idea. However, we should have some experts before the committee — probably the Legal and Constitutional Affairs Committee; I cannot see anything more legal than this issue. We must do it.

Again, I ask the question: Does the honourable senator agree with that point of view?

Senator Grafstein: Again, I return to the committee and to our interim report. I think it was covered amply by that report.

The honourable senator raises another problem, which was touched on by Senator Banks yesterday — and I worry about it. I worry about unfair attacks on the executive. We have put into this bill a methodology by which there can be unfair attacks on the executive. I believe we should question the executive. I believe they should be held accountable, but I also know — having been a chief of staff for a minister — that it is very important to ensure that the minister has the right to defend himself properly.

• (1540)

We have put in this bill something that is really mischievous — the other side has — and that is that a senator may, with reasons, send a letter to the commissioner on the other side for an office-holder, which is any cabinet minister. We are not talking about a cabinet minister who is in our chamber; we are talking about another cabinet minister. Any member, any senator, can send a letter, on reasonable grounds, indicating that that minister has failed to maintain ethical principles — which is vague for uncertainty, if anything. However, it leaves itself open for a mischievous senator — and, by the way, honourable senators can sometimes be mischievous, including yours truly.

Let us start with me, the most mischievous senator of all. I might mischievously say, if there were to be a Conservative government on the other side — I was on the other side and I recall this quite well — if I felt that they were not doing their duty over there, I could now do something really wonderful. I could write a letter saying that the minister over there, the office-holder, has not met my, or ethical, principles, in the way that I read them. Then I step back. I have smeared him. It is public. The commissioner opines, and that is it. That is not fair. That is not right. That is not appropriate, and I do not think it is parliamentary.

Hon. Tommy Banks: Honourable Senator Grafstein, will you accept a question?

Senator Grafstein: Yes.

Senator Banks: I find everything that the honourable senator is saying most compelling. However, since the bill has already been to committee twice and been reported unamended, how does the honourable senator think that the refurbishment — or whatever he is talking about in addressing the shortcomings of the bill as he sees them — might be addressed? If it is sent to committee again, why would we expect a different result?

Senator Grafstein: It is realistic to understand that we were placed under a timeframe. I think that if the timeframe were removed we could come to a satisfactory resolution on all of these points. The hammer here is the timeframe, not the substance. We have dealt with a lot of the substance.

I will give honourable senator another example that troubles me about this bill, and that is that we remove the Parliament of Canada Act, which has been in good stead for about 100 years. We have removed it from this bill. We have had no evidence on that. There has been no evidence as to the rationale for why we removed the Parliament of Canada Act regime on parliamentarians, other than to say that there will be another code someplace else. However, there is no rationale as to why it should be removed in this bill now, before the other part of the bill comes to fruition. We have had no evidence on that.

Therefore, we have taken one of the great safeguards that we have had in a parliamentary term to sustain the integrity of Parliament, the Parliament of Canada Act, and we have amended it in this bill; we have deleted it, and we have had little or no evidence on that point. I find that uncomfortable and unsatisfactory.

The Hon. the Speaker: I know that Senator Kroft wishes to speak, but are all senators rising to put questions?

An Hon. Senator: Yes.

Hon. Pierre Claude Nolin: Senator Grafstein, I find your comments quite interesting. I hope all honourable senators were listening to you. Discussing the separation of power is quite central to the debate we are having right now.

As Senator Beaudoin said, what you are proposing is quite innovative. Could you explain again the innovation component of your proposal? We are not used to seeing a visible differentiation between the executive and the legislative. It was probably part of the fabric of our Confederation to have a central federal government that was really on top of things. What you are proposing — and I am on your side — is a clear differentiation between the executive and one officer, or an appointment from Parliament.

Do you not think — and I know this is not part of the objective of the bill — that in the future, Parliament should consider applying your innovative proposal to other types of appointments made by Parliament? I have in mind, of course, the Auditor General and various officers — Chief Returning Officer, Electoral Officer and the like. Do you not think we are mature enough in our federation to start separating from the executive some key players in the quality of the operation of the legislative body of our federation?

Senator Grafstein: Honourable senators, first, the recommendation about the ethics officer is not mine alone. It is not my innovative one. It was unanimously considered by the committee, and everyone on the committee — including all the officers on this side who are ex officio members — all agreed to that. This is not me. Then the committee went on to say in the report, “it is unacceptable to do other than that.” Why? Because of the separation of powers.

However, the honourable senator raises a deeper question, namely, to what extent should we separate ourselves in practice — not so much from the executive but from the other chamber? When we talk about an officer of Parliament, that is someone who reports to Parliament and not to the executive alone.

I have a problem with this, which came up with respect to the horrible case posed on the order side by Mr. Radwanski. I will not go into that, but it was very unacceptable to me — and to some of us on this side — that that officer, who was appointed by both chambers of Parliament, was removed without this side having one word to say about it. We believe in rights, but we did not give that gentleman a chance to respond — and he was our officer as well as their officer. There is a problem.

Senator Robichaud: He resigned.

Senator Carstairs: He was not removed. He resigned.

Senator Andreychuk: He resigned.

Senator Grafstein: Excuse me. He asked — I just raise this as a problem for this house. I do not want to go further with you. He asked to have a hearing, and he was not given an opportunity.

Senator Prud'homme: He did not ask us.

Senator Grafstein: We on this side, as best I can recall — and perhaps the government can correct me if I am wrong — did not have an opportunity to deal with that matter prior to the time that he resigned.

My point is not to get into bigger arguments, but just to say that this is a very difficult field, and we must proceed in a very careful way when we deal with this matter.

Senator Nolin: I admit it is difficult. That is why Senator Beaudoin was quite right when he said it is an innovation.

Is it an important and difficult issue because we have not had the proper process to appoint and monitor the work, not only of those officers but also of the employees of those officers?

What we are doing with those various laws that are creating those offices is making all those people employees of the federal government, protected with the various laws of Canada — the same protection we are giving to other employees of the federal government. Perhaps one day we will have to create within Parliament a structure or process to monitor the work on an ongoing basis of those officers, and not wait for those dramatic events that the honourable senator has referred to. We do not want that to happen. What we want is independent and impartial officers. We do not want them to be appointed or paid by the executive; we want them to be appointed and paid by Parliament.

That is why it is quite innovative. I thought it was important for our colleagues who are not familiar with those various concepts that are at the heart of the creation of our country. We are now questioning that and saying, perhaps we should go and innovate, and then go further and be creative. That is why I want you to comment on that point.

Senator Grafstein: Honourable senators, I might have left the impression that this was in reaction to government. I was not critical in any way, shape or form about the government with respect to the Radwanski matter. I was being critical of the House on the other side for not thinking of alerting us to this problem so that we might deal with it. It was not my intention to be critical of the government.

• (1550)

Senator Nolin: For not thinking of us, yes.

Hon. A. Raynell Andreychuk: Honourable senators, I want to follow up on Senator Bank's question.

In this chamber, we are used to knowing that certain bills have been introduced in the House. Some of those bills make it here and some do not. We are constantly asking for the government to outline its priorities.

Was the honourable senator aware at any time during the study of the ethics package that we would be facing a deadline of this month?

As an aside, it seems to me that our committee had already embarked on a study of ethics. We had been alerted that an ethics package would be presented that would require us to consider a code of conduct, modalities and other areas. We had commenced our study. We were alerted that the government was preparing a bill and, therefore, we provided some interim comments. However, nothing was presented in June, and the Rules Committee went on to other business.

When the Senate resumed after the summer recess, a timeline was not signalled. In fact, the only timetable we heard of was the fact that the Prime Minister would probably be leaving in February. Therefore, no changes were made to our agenda or timetable so that we would sit through September in such a way that would have given us a full opportunity to study this matter.

Was the honourable senator on his side — we certainly were not — aware that the committee would be required to complete its work by last Friday? I believe that the committee understood that the date for completion of its study was December 18.

The opposition, by way of a point of order, has already put on the record the reasons for their absence from the committee on Friday. In reading the draft minutes that I received, it appears that the chair indicated in response to a question by a senator that opposition members were canvassed and that some replied that they could not attend. Others, I presume, could not express an opinion. I presume that staff of the senators' offices were contacted and that they could not express an opinion as to whether the senator could attend.

I am interested in the opinion of the honourable senator. What led him to raise concerns on the record because the opposition members were absent? The honourable senator mentioned that, had we heard witnesses, we could have had a fair and adequate hearing. I would like to hear the views of senators on having an all-party resolution of this in committee.

Senator Grafstein: Honourable senators, on the first point, I have no special knowledge about this other than what we are given to understand in the press, from the other side, and from our leader.

As to the work of the committee, I believe that we are making slow but steady progress. I want to commend all members, including the chairman, who had to endure the important questions that many of us raised.

As Senator Nolin has said, we are moving into new territory here and we want to proceed cautiously. The chairman of the committee has had to endure many of us pushing the envelope further and further because, as we opened each folio, new problems presented themselves.

The interim report was a fair assessment of all the problems we had identified at the time. We sought to come to a unanimous

view on some issues and to set out the arguments on other issues. Clearly, the report states on page 2, "...considerable work remains to be done.." and on page 3 we see the following:

For greater certainty the Committee intends to give further consideration to the relevance of the *Privacy Act*, the *Access to Information Act*, the *Federal Court Act* to the activities of the Senate ethics officer under the *Rules of the Senate*.

Senators Nolin and Beaudoin pointed that out. We did not do that. We did not complete our work. It was uncomfortable for me at the clause-by-clause stage that, all of a sudden, we were dealing with amendments to the Privacy Act and the Access to Information Act. I believe that there is a proposed amendment to the Federal Court Act. I became very confused. We had heard little or no evidence about any of those amendments. We were chopping the bill, amending the bill and changing things at the clause-by-clause stage without having heard any evidence.

I wanted to hear more evidence on these points, and I thought we could do that expeditiously. Some of us made efforts to reach out. I believe it was Senator Beaudoin who told us that there are not many experts in this area. We would have to get experts from a small pool.

Efforts were made to contact at least two outstanding experts. Although I did not speak with them myself, I believe those two were prepared to come but, because they were teaching that week they could not attend. I asked, "What's another day or two? We will be back on Monday or Tuesday." As it turns out, we could have come back on Monday, Tuesday or Wednesday to deal with this. However, the majority on the committee chose not to do so.

I will conclude with this comment. I am and have been a partisan Liberal, and I am proud of it. I believe that the Liberal governments have been great for this country, greater than any other governments. We are all agreed on this side that we had great governments.

Senator Kinsella: We were with you for a while.

Senator Grafstein: This government is a great government, I think you will agree. I have no problem saying that. However, having said that, the reason the Liberal party is one of the great political institutions of the century is because we believe in principles.

Senator Lynch-Staunton: You believe in what things?

Senator Grafstein: Principles.

The principles are very simple. I want a strong opposition.

Senator Stratton: You cannot say that with a straight face.

Senator Nolin: The honourable senator was saying that to get our attention. He has it now.

Senator Grafstein: I want a strong opposition because I can beat them every time.

Senator Prud'homme: Senator Grafstein, sit down here with me and we will run this place.

Senator Andreychuk: I take it that the honourable senator had no reason to believe that this was a partisan issue. It was a Senate issue. It would have been better to have allowed the time not only to hear the witnesses but also for the opposition to be heard.

Senator Grafstein: Honourable senators, I agree with that. I will give you one insight about the question of convention versus the Constitution. The honourable leader opposite raised the question of convention, of rules. Quite frankly, I agree with him.

There are traditions and conventions here that are not in the rules. The rules are meant to deal with certain things, but there are traditions in Beauchesne and so on that are not contained in the rules. We have to look at not only the rules but also the underpinning of the rules.

One of the strong conventions is that, when we come to constitutional issues dealing with the constitution of the institutions, the opposition must either agree or disagree. I am not suggesting that we will be unanimous on all issues. Why should we be unanimous? We disagree on many things.

However, in this instance we are dealing with fundamental issues and I thought we were proceeding on a bipartisan basis. I heard some members of the opposition agreeing with the government and disagreeing with some on this side on details. We were making progress. We were educating ourselves as we went along. As Senator Beaudoin said, we are moving in a new direction. Therefore, the best direction is to be patient, cogent and get the job done.

Honourable senators, I think the public wants us to do this. They want clarity. I do not think that this bill, quite frankly, is as clear as it could be with a bit more work on our side.

The Hon. the Speaker: Honourable senators, I must draw your attention to the fact that it is four o'clock and, pursuant to the order adopted by the Senate on November 3, 2003, the Senate must now suspend proceedings until eight o'clock this evening.

Is it agreed, honourable senators, that the Speaker do now leave the Chair until the sitting is resumed at eight o'clock, the mace remaining on the table?

Hon. Senators: Agreed.

The sitting of the Senate was suspended.

• (2000)

The sitting was resumed.

HOLOCAUST MEMORIAL DAY BILL

MESSAGE FROM COMMONS

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons to return Bill C-459, to establish Holocaust Memorial Day, and to acquaint the Senate that the Commons have agreed to the amendment made by the Senate to this bill, without amendment.

[Translation]

SEX OFFENDER INFORMATION REGISTRATION ACT

FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-23, respecting the registration of information relating to sex offenders, to amend the Criminal Code and to make consequential amendments to other Acts.

Bill read first time.

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for second reading two days hence.

[English]

CRIMINAL CODE

BILL TO AMEND—FIRST READING

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons with Bill C-46, to amend the Criminal Code (capital markets fraud and evidence-gathering).

Bill read first time.

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

On motion of Senator Robichaud, bill placed on the Orders of the Day for second reading two days hence.

PARLIAMENT OF CANADA ACT

BILL TO AMEND—THIRD READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C., for the third reading of Bill C-34, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

Hon. Gerald J. Comeau: Honourable senators, I have a question for Senator Grafstein, if the honourable senator would accept it.

Hon. Jeremiah S. Grafstein: Yes, I will.

Senator Comeau: From reading the bill, my understanding is that the ethics officer will be a government appointee, owing his appointment and reappointment to the Prime Minister. Also, his salary will be paid by the executive. This sets up an employee of the executive working in the Senate. As per proposed section 20.7, he would report to the Speaker of the Senate and not to the senators, unless I am reading this section incorrectly.

Many new members of this chamber who have not been around for a long time have always sat on the government side of the house. It is a much more comfortable side to be on. However, every once in a while, however, it does happen that you sit on the opposition side. Picture yourself in the opposition, having to open your private books, and possibly those of your spouse's private books, financial and otherwise, to a person who is appointed by the Prime Minister and owes his or her reappointment and salary to the Prime Minister, and reports to the Speaker of the Senate.

Can Senator Grafstein tell me whether I am reading this correctly, and whether it has been explained to the new senators on that side who have never sat in opposition, that this could suddenly be the situation in which they find themselves when there is a change in government?

Senator Grafstein: I thank the honourable senator for that question.

Senator Comeau is correct, and this is again contrary to the conclusion in the interim report of the committee. As I recall the discussions in the committee, there was a strong consensus that the Senate officer would report to a committee, most likely the Internal Economy Committee and/or the Rules Committee. That was the extent of the discussion. I would have to confirm that with the transcript because the discussion took place some months ago. Other members of the committee might correct the record on that.

Senator Rompkey: Yes, to report to a committee.

Senator Grafstein: Senator Rompkey is agreeing with me that the officer was to report to a committee. As I said, there was consensus in the committee that this officer was to be, in effect, an officer of the Senate.

The Honourable Senator Comeau is quite correct. The bill itself says at proposed section 20.4(7):

Prior to each fiscal year, the Senate Ethics Officer shall cause to be prepared an estimate of the sums that will be required —

— for the offices.

The bill states further:

(8) The estimate referred to in subsection (7) shall be considered by the Speaker of the Senate and then transmitted to the President of the Treasury Board, who shall lay it before the House of Commons...

There is a step missing and there is a missing link of control because we wanted — and I think there was wide consensus about this — to ensure that this officer reported, and felt that he had to report in all of his aspects, to a committee of the Senate.

We must deal with estimates, there is no question about that, but I assumed that the estimates would be part of the general Estimates that would be referred from the Senate to the other place as part of the appropriations, not drawn out in this particular fashion and focused on in this particular fashion, and this is why we are concerned.

Proposed section 72.03 reads:

(1) The Ethics Commissioner shall be paid the remuneration set by the Governor in Council.

What we see here is distinctly different from, and quite contrary to, the interim report. Why the change? By the way, there was no evidence and no explanation. There was no discussion in the clause-by-clause study on this point. There was no evidence brought by the government to support this change.

• (2010)

My point is this: How can we be good members of the committee, reach a consensus and a unanimous decision one month and, then, several months later, be asked to reverse it quickly with no collateral evidence? There may be a good rationale here, but I cannot see it and, obviously, other senators cannot see it. Here we are, put in the position of having to vote on a bill about which our committee concluded exactly the opposite, for good, rational, parliamentary and senatorial reasons.

Senator Comeau: Honourable senators, the bill well establishes that the ethics officer will be a government appointee. There may be consultation with the leader, of course, but that may take the form of a phone call, saying, "Look, I have decided to consult," and that might be it.

Senator Rompkey: And a vote.

Senator Comeau: A vote which, incidentally, will be based on the will of the majority. Judging by the way the other side has been voting on bills, it appears that senators follow the whip's orders as if they would lose chairmanship of their committees were they to vote against the wishes of the whip.

Senator Rompkey: Oh, oh!

Senator Lynch-Staunton: When he is here!

Senator Rompkey: Is that a question for Senator Grafstein?

Senator Comeau: Throwing the weight of the majority around does not earn brownie points, for the time being. Let us just say that the majority has been voting on the government's side for quite a while.

Senator Lynch-Staunton: We never did that.

Senator Comeau: And we know where they are going now.

Let me get to my real question, honourable senators. We will have what is called an ethics officer who will be hired and appointed by the Prime Minister, as sanctioned by his majority, whose salary will be dependent on the decision of the Prime Minister and who, ultimately, must get his budget through the Speaker who, dare I say it, is appointed by the Prime Minister.

As a senator, I will have to go before this person and lay completely bare, for all to see, my personal finances and my spouse's personal finances, as will be determined by the Rules Committee, which can hold meetings without opposition members being present.

Will this not cause people like myself, who have believed in parliamentary privilege for a long time, to question whether I still have parliamentary privilege, if there is a person appointed by the Prime Minister's Office to whom I must report all this information and to whom I have to start consulting? We have seen what can happen when a lapdog is appointed. We see it every day. Look at the response he gave to —

Senator Robichaud: The senator is asking a question and answering it.

Senator Lynch-Staunton: Senators are allowed to comment.

Senator Comeau: I am preparing the stage for the question.

My question to Senator Grafstein is this: Would I not be justified in saying to the ethics officer, "I do not want to divulge to you and your hired staff everything that is in my books because I do not trust you"?

If the appointment were to be agreed to by the Leader of the Opposition —

Senator Smith: Is this a question?

Senator Comeau: — who will look after the interests of those on this side, then that would be a different matter. However, if it involves reporting to a person appointed by the Prime Minister, then that is a different matter. Would the honourable senator agree with that?

Senator Grafstein: Honourable senators, it is fair to say that when I look at this bill it reminds me of one of the most successful plays in Toronto. It is called *The Little Shop of Horrors*.

This is a collective bill. It is a bill that comes from the constitution of the Senate and which comes from a committee of the Senate.

By the way, honourable senators, I wish to set the record straight as to why I disagreed with some of the clauses of this bill. It was for all the reasons I have suggested, which is part of the reason I stand up at third reading to explain my position. My colleagues on this side, who are not on the committee, are entitled to understand why, on division, I opposed a number of these clauses.

Senator Cools: Good for you!

Senator Grafstein: At the end of the day, I abstained on the report. Why did I abstain on the report? It was because I felt there were principles with which I agreed. I do not disagree with the fundamental principles underlying the bill. The devil is in the detail.

The honourable senator has raised a series of horrors, and I have agreed with them. How could I fail but to agree with them? That was the essence of our recommendation in the unanimous report of the committee. We said it was unacceptable. The word we used was "unacceptable." In diplomatic terms, the word "unacceptable" is as harsh a word as one can use. The committee concluded unanimously, and I referred to it earlier today, that it was unacceptable to go other than by agreement of the two leaders to ensure the confidence that you wanted to have in that officer. It turns out that this officer is a different phenomenon.

Honourable senators will recall that we started by saying that we wanted a jurisconsult. That was Senator Oliver's recommendation.

Senator Prud'homme: No, it was ours.

Senator Grafstein: Please, Senator Prud'homme, my memory only goes back to the Milliken-Oliver report. I am struggling with that report. I am trying to remember that report. Do not press my memory too far. It is fragile and it is late.

Let us remember what happened in the last few months. We went from the idea of a jurisconsult. Everyone was sort of caught. We did not like the word in committee because we wanted to make sure that it was a counsellor, an adviser, and there would be solicitor-client privilege to protect senators in the circumstance that was suggested as senators balanced their private interests against their public interests.

That is not the case. The honourable senator has raised a series of fears that I think are justified on the face of the bill. However, my fear goes even deeper than that.

I turn to my colleagues on this side to say: Wait a second. What happens if, on the other side, this officer is a member of — and forgive me if I say this — the Alliance, who believes in the abolition of this place? Let us, for the moment, consider this horrible scenario. What would happen if the leader on the other side — and believe me, honourable senators, this should not go from my mouth to God's ear — were a member of the NDP?

Senator Cools: Worse still.

Senator Grafstein: The honourable senator will recall that they wanted to abolish the Senate. They said that the Senate was useless. However, when we were opposing the GST, they joined us and applauded what we were doing because they felt we were upholding parliamentary privilege and principle. Remember that, honourable senators. Yet, they still say, "Let's abolish this place."

If they cannot abolish this place constitutionally — and we know the problems with abolishing something constitutionally — what can they do? They can appoint an officer who will establish ethical principles, as set out in the bill, that will be so high that no one can reach them. As a result, they will be targeted here.

There is a real concern, honourable senators. How do we remove all those doubts? We follow the committee report. The committee report states that there should be an agreement on an officer by a resolution of this place, an officer who, in effect, will be paid by this place and who will come under our Senate budget and be controlled by a committee where the opposition and the independents will have a voice in the decision. That would be fair, objective and democratic.

Hon. Anne C. Cools: Honourable senators, will the honourable Senator Grafstein take another question?

Senator Grafstein: Yes.

Senator Cools: I would ask the honourable senator to reflect again on the proposed section 20.4(8), about which the honourable senator was speaking, which concerns the submitting of the estimate of the Senate ethics officer to the Speaker of the Senate, Dan Hays. Did the committee, in its deliberations, make any effort whatsoever to adduce any evidence from the Speaker of the Senate in respect of this particular proposal? The honourable senator has already asserted that this particular measure is somewhat unusual in that this will be a situation where this Senate officer's estimate will not be submitted to a Senate committee, as is everyone else's, but it will be submitted to the Speaker.

• (2020)

Were the chairman of the committee and the committee members able to enlist any opinions from the Speaker of the Senate on the propriety and the desirability of such a measure, and were the opinions of the Speaker considered at all?

Senator Grafstein: First, I do want to correct an earlier response, and that is I want to refer all honourable senators to proposed section 20.5(3) where it says:

The Senate Ethics Officer shall carry out those duties and functions under the general direction of any committee of the Senate that may be designated or established...

That does not ameliorate my earlier comments about the question of budget versus the clutch of control, because I think money follows control and the two are indistinct.

The honourable senator, however, touched on another point about this officer that came to mind and that is, again, we had the view that this officer would be, in the form of the Milliken-Oliver report, a jurisconsult, which is essentially not too different from the register of interests in the House of Lords, who would opine and advise senators how to conduct their affairs. That information would be confidential and they would arrange their affairs in such a fashion to meet the code of conduct. Here we have an officer who also is not only, in effect, a consult in some general terms, but there is confusion in his office because he is also an investigator.

Senator Cools: That is right.

Senator Grafstein: Therefore we would be in a position where a senator would go in and lay bare, as Senator Robichaud says, his or her situation. A senator would have nothing to hide, but would be entitled to say, "I still am entitled to privacy under the Privacy Act if I conform with the conflict of interest guidelines. All of a sudden you would find that you had laid it all out and then another issue would arise not directed to all that, and then the senator would find himself under a cloud. He would then finds that the place where he thought he could comfortably and carefully lay out and arrange his affairs, in such a fashion to ensure that he can conduct his business pursuant to the rules of this place, is a place where that same person to whom he has made disclosure is also a quasi-investigator.

In Canada we do not yet have the French system, but we are getting there. The French system, which, as you know, even Quebec has moved against, is one where you have an officer who is a judge and a jury. We do not have that. We do not have an adviser, a judge and a jury. That is the French administration system and we chose not to adopt that. In Quebec they chose not to adopt that in many respects as well for all of the various reasons that we need not go into. Again, there is confusion in the concept here as well — not in the principle but in the concept.

Honourable senators, with a few more days, another month, we could clear up these ambiguities and have something that everyone would understand. I thought clarity was preferable to confusion.

Senator Cools: I am impressed by Senator Grafstein's answer. It answers many important questions. However, it did not answer the question that I posed, which I think is also important. My question was on the sense of the propriety, the advisability and the wisdom of the Senate ethics officer submitting his or her estimate to the Speaker of the Senate for approval and not to the Senate as a whole or to a Senate committee. Honourable senators, this is extraordinary. For senators who do not pay any attention to this, this is a mechanism that will send the estimate of the Senate officer beyond the Senate chamber.

I do not think many senators understand what this means. The Speaker's own estimate has to come before this chamber for a vote. This is incredible. This particular measure in this bill exempts the Senate ethics officer's estimate from a Senate committee and from the Senate chamber, and sends it directly to the President of the Treasury Board via the Senate Speaker.

It is interesting that, in this chamber, the Speaker does not now have the power to do that for the estimate for his own office. This is an exceptional situation. In terms of accountability, quite frankly, this particular measure blasts a hole right through the whole phenomenon of accountability of the public purse.

Has Senator Grafstein given this some thought?

Senator Grafstein: The honourable senator raises a valid and important point of principle. When I read that provision, I said to myself that what we are doing here is putting our honourable Speaker in an invidious position. I will not go into the detail of that. However, think about the nature of his appointment, think about the nature of his responsibilities here, and then think about this particular question. The Speaker does not need this.

Senator Cools: I agree.

Senator Grafstein: The Speaker does not need this for this officer to be effective. This is not to be in any way, shape or form disrespectful to His Honour because I think His Honour is an adornment to this chamber.

Senator Cools: Can Senator Grafstein tell us whether the opinion of the incumbent of the office, in other words the current Speaker of the Senate, has been solicited, because I should think that, in the matter of us passing such a clause in the bill, the opinion of the incumbent, Senator Dan Hays, the Speaker of the Senate, would be paramount in considering the constitutional question of the relationship between the Speaker, the senators themselves, the Senate itself and this new office that is being created, called the Senate ethics officer. Has Senator Grafstein wrapped his mind around that?

Senator Grafstein: In a nutshell I will say this: It is important that the committee and the house deal with this question before we put the Speaker in an uncomfortable position. It is our duty, quite frankly, to establish rules and regulations that are consistent with the practice and the procedure of the house, and to avoid as best we can any type of question about the role of his honour, who is necessary in order to conduct this business and to represent this place.

My view is that this is another problem. I am not sure I would go to the extent that the honourable senator has about how deep the problem is, but it is a problem. The problem for all of us is obviously this: We have had no evidence on this.

Senator Cools: My point, honourable senators, is that we have not adduced any evidence. In other words, let us visualize a situation such as Mr. Radwanski, former Privacy Commission,

found himself in where, for example, the Senate ethics officer were to find himself in conflict with the senators. Taking the example of Mr. Radwanski, what would be the position of the Speaker of the Senate, then, if the Senate of Canada would have tacitly if not overtly approved the expenses and the budget of the Senate ethics officer? What would be the position of the Senate Speaker in those circumstances?

Honourable senators, it is most important that when we pass bills we conceptualize and we conceive of every single eventuality that might occur, because we must understand that this will be cast in law, and its execution and administration will operate in a state of practical politics on a day-to-day basis.

Has the honourable senator, in his wisdom, wrapped his mind around this?

Senator Grafstein: The short answer to that, honourable senators, is that we have raised the issue. It is for each honourable senator now to look at this and ask himself or herself whether they agree with the conclusions of the honourable senator or others.

• (2030)

Hon. Herbert O. Sparrow: Honourable senators, after this discussion about the ethics officer, will we need an ethics commissioner to check on the ethics commissioner? Who will do that? Can the honourable senator add something to that?

Senator Grafstein: The answer is clear. Again, the Honourable Senator Sparrow, the pre-eminent and longest serving senator in this place, puts his finger on the heart of the issue, which is that the commissioner would be accountable to the other place because he is a Governor-in-Council appointee. Therefore, the issue would come up in the other place. If there were somebody to account for an Order in Council, it would not be here; it would be there. Hence, the rationale for going back to the fundamentals is, again, to keep it here, to separate the two Houses.

The honourable senator raises the heart of the heart of the problem. We say "separation," and then we do not separate. Then we leave ourselves open to a situation where, if we are unhappy with the role of the counsellor or the officer, we can do very little about it because it is a question of an Order in Council of the other place. We would have to have our government leader pass on a message to the cabinet, but otherwise, unless some other honourable senator has some other constitutional means of addressing that issue directly to the other chamber, other than by address, I do not understand how we could get at that particular problem and confront the government on the other side or defend the officer on the other side.

Why would you want to have the government defend an officer of the Senate for deeds done in the Senate? All progress is by an upward-winding staircase. Descent is also by a downward-winding staircase. This is a downward step, not an upward step.

Senator Sparrow: One other issue that concerns me is that we have not decided on what code of conduct we require, and we are putting in an ethics officer before we know what his job is. That concerns me a great deal. It seems that we are ass backwards — and that is not a dirty word here.

Senator Cools: Just backwards.

Senator Andreychuk: In Saskatchewan, it is not a dirty word.

Senator Sparrow: We are putting the horse — I will not use that expression. This is not funny. The chicken crossed the road because the colonel wanted him to.

Senator Stratton: Yes, colonel.

Senator Andreychuk: Spoken like a true owner.

Senator Sparrow: If we can develop a code of ethics, then we can decide later what we require to oversee that code of ethics.

Senator Cools: I agree!

Senator Sparrow: We are not doing that. We are saying we will put in an ethics officer. We do not know what he will do yet. We will allow him to set up a structure, a bureaucratic structure with employees and so on, without any rules to decide what he will do. That is probably the most improbable aspect of what we are doing here.

Would the honourable senator agree that we should look at the rules that we want first? Then, if the ethics are not covered — and I do not like the word “ethics,” either — or the *Rules of the Senate*, the Criminal Code, the Parliament of Canada Act or the common law is not sufficient, or something — and it may be only a small part — is missing, we can say, “Yes, our ethics officer can be one of the Table Officers here without additional cost or additional effort of any description made by our Table Officers here in the Senate.”

That is what we must look at. Why would we put the Senate, Parliament or the country in a position where we will legislate because of some political repercussions or because of political backlash one day? That concerns me. If we are doing it right, then we have to withstand that backlash.

There were one or two questions there. Would the honourable senator answer them, please?

Senator Grafstein: The honourable senator raises a very important question. I will try to deal with just one question of the many comments as best I can.

The question is a good one. Again, it is in conflict with what we have been told by the House leader on the other side. What we and the other side have been told was, “Do not worry. We will

have an officer, and then you will set the rules. Do not worry.” We were told that, and the other House was told that: “Do not worry because you will set the rules. All we are dealing with is the officer.” Both Houses were told that.

Let us now look at the bill. When you turn to the bill, proposed section 72.07(c), it says that:

The mandate of the Ethics Commissioner in relation to public office holders -

in other words, cabinet ministers —

is to provide confidential advice to a public office holder with respect to the application..

— of those ethical principles, rules and obligations, which are established in 72.06(1) by the Prime Minister.

The Prime Minister establishes ethical principles, rules and obligations for public office holders. There is no problem with that. Then it goes on to provide that that commissioner can provide confidential advice to a public office holder.

Then when it turns to the *puisne* members on the other side, the ordinary members of the commons, it says, in clause 72.08(6) that:

The Ethics Commissioner may not include in a report any information that he or she is required to give to keep confidential.

Then it goes on to say, in effect, that there is a form of confidentiality.

If the rules will cover you on the other side, why was it necessary, as far as members on the other side are concerned, to have a confidentiality provision? On our side, we have said that we will be all rules-based, and we have discussed in committee that certain information should be kept confidential in the public interest, as well in the private interest. Those rules are yet to come, but we do not have a statutory protection. The reason for that is, I believe, from a drafting standpoint — if you think about the legislative history here — that there was a change in the bill to remove the ethics officer from the other side and set up another one, but they did not do the rest of it. They did not cleanse it. They did not make it consistent. The House on the other side gets greater protection from a statutory standpoint than we do.

Can we clarify that in the rules? Maybe we can. Is it a good way to go? No, it not. It is just not good drafting practice.

Again, all I am saying to the honourable senators here who are convinced that this is the best bill ever, because that is what we are being told, is that it will provide serious problems for us immediately, to try to understand where we draw the line here and how we properly protect what already seems to be partial protection.

On the other side, they have already put in a code, and if you read that code, it is now fuzzy about what is confidential and what is not. It is quite confusing.

As far as I am concerned, I do not mind if the confusion is on the other side. That is their constitution. I prefer it not to be. Our job is to make sure that when they miss something, we pick it up. However, let us at least be clear in that confusion as best we can. That is why some of us have agreed with the committee recommendation — this did not come from the government — to keep our officer separate and distinct, with his or her duties, offices and rules all protected by the proceedings of Parliament so that we can ensure that we provide clarity and consistency about these issues.

• (2040)

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I do have a number of questions that I would like to ask of Senator Grafstein. I would like to walk through these questions. I will start at the beginning.

Senator Bryden: That is a good place to start.

Senator Kinsella: Is there not a specific difference between the House of Commons and the Senate of Canada?

Senator Grafstein: Yes.

Senator Kinsella: Is part of what creates that specific difference between these two Houses not the fact that the House of Commons, and the House of Commons only, can introduce legislation that affects the raising of public monies?

Senator Grafstein: Yes.

Senator Kinsella: Honourable senators, given the fact that we cannot do anything in this house that affects drawing money from the people of Canada, that, in and by itself, should speak to the specific difference between this house and that House.

Senator Grafstein: To be absolutely fair, it is true that under our constitutional provisions money matters are left to the other place, so that we can only vote them up or down. However, there is an exception. The exception is the money that this house requires to conduct its affairs. That is different. To my mind, that is what I thought we were doing. We were trying to separate ourselves from the constitutional issue that the senator is obviously implying so that we would keep this matter within the boundaries of our house budget. Hence, a house officer accountable to a Senate committee on this side.

Senator Kinsella: That leads me to the next question: What exactly are we fixing that is broken, as it applies to something that is broken in the Senate of Canada?

Senator Grafstein: What is clear is that there is a desire amongst all sides to have an easy and clear place in our rules, to put them all in one place so that they are easy to get at, read and understand. That is what I call evolution and modernization. I have no objection to that. I do not think any honourable senator has any objection to that. This would be part and parcel of having a code of conduct under our rules, in one place, clear, understandable and comprehensible.

Senator Kinsella: Would the honourable senator not agree that the logical first step is to establish the norm of the ethics; in other words, establishing the code of conduct, rather than starting off with establishing the machinery for the enforcement of that code of conduct?

Senator Grafstein: Honourable senators, I thought we had reached a consensus in the committee by saying that if we had an officer appointed under our rules, we could then adjust the rules to suit that particular officer, and vice versa. This way, we cannot.

Senator Kinsella: Continuing with that development of what I find to be a logical progression of analysis, if we do not have a code of conduct but we have a machinery, and the machinery is set in place because of the pressure of the government of the day, we will be trying to develop a code of conduct to insert in an *a posteriori* fashion — and God knows whether or not the machinery would be appropriate to the enforcement of that code of conduct — and then go to the next step.

What sanction is in the present bill if, notwithstanding that there is no code of conduct, there is a “transgression” by an honourable senator in the eyes of the ethics officer? What sanction is in place in the bill as it is before us now?

Senator Grafstein: Honourable senators, I am not clear about that. Since I am not clear, it is another question of lack of clarity.

I will answer this briefly: There is one way to remove a senator; that is, under the Constitution. That does not disappear. That remains the only way to remove a senator. The rest, to my mind, is admonitions, penalties and so on. We have come up with a series of penalties that are already in our rules to deal with an errant senator.

Senator Kinsella: Then following it in a logical, step-by-step analysis, this clearly is the constitutional question. What we have before us, honourable senators, is a matter of a serious constitutional nature. Would the honourable senator agree with that?

Senator Grafstein: I agree that it is a constitutional issue, and I agree that we have no evidence about it one way or another.

Hon. Marcel Prud'homme: Briefly, I was involved in this subject so many years ago. We invented the word “jurisconsult.” It was so limited in scope and so clear. Public opinion was very happy with it. Now I see a monstrosity in the making; an immense bureaucracy.

I always read both French and English in a text. I am not talking about the bill itself. I just wish to refer Senator Grafstein, who has knowledge of both, to page 4 of the bill. If I read clause 35 in English and in French, it seems as if I am reading two different clauses. I may be wrong. As I said in the Banking Committee earlier, if I am wrong, I want to be told. If I am right, I want somebody to look into it. There is something in English that does not appear in French, or vice versa. I will leave it to the linguists to address before the end of the debate. I know Senator Carstairs will make sure that someone in her office will double-check what I am saying. That is all for the moment.

Hon. Douglas Roche: Honourable senators, I wish to make a few short remarks — and I emphasize “short” — about the ethics bill.

I support this bill and the principles behind it, that legislators should be subject to a transparent set of ethical guidelines and that their adherence to those guidelines should be independently verifiable. By creating the position of a Senate ethics officer and enshrining that position in statute, this bill will bolster public confidence in and respect for the important work that we do both in this chamber and in the committees. Honourable senators, that will greatly assist us to continue to have a significant role in the shaping of legislation.

While there have been various objections advanced against the bill, I see nothing that would prevent it from fulfilling its basic objective — that is, the establishment of an independent mechanism to ensure and verify the ethical conduct of parliamentarians.

Under Bill C-34, the Senate will maintain authority over the actual formulation of the ethical guidelines governing members of this chamber, thereby setting the basic terms of reference that will guide the conduct of investigations. Furthermore, the Senate will have the power to confirm or, alternatively, to deny the appointment of a Senate ethics officer.

• (2050)

Most important, however, is the process by which the officer is appointed and the ethics guidelines created will be an open and transparent one. If there are remaining weaknesses that the current bill does not address, this transparency will act as a check on any temptation to abuse those weaknesses for personal or partisan advantage. We have seen how effective public attention to ethics issues can be in the way that the former Privacy Commissioner was dealt with following his indiscretions.

Finally, we should note that the government consulted relevant committees, both here and in the other place, on the draft version of this legislation and has taken seriously the recommendations made by committees by incorporating them into this bill.

Honourable senators, the Canadian public is looking to us to confirm our intention to take seriously our role as legislators and to commit to upholding ethical standards in the conduct of our

business. I submit that we have nothing to hide in this chamber. The age of political transparency has arrived. That is a key point that should govern our actions on this matter. Let us not delude ourselves that we are being watched closely on how we will conduct ourselves in this matter.

In *The Hill Times* this week, in an article entitled “Ethics bill bogged down in Senate,” Aaron Freeman writes:

If Senators can't manage to pass Bill C-34, and a meaningful code to go with it, this display of self-interested arrogance should encourage the rest of us to finally re-think the value of the unelected Upper Chamber.

We should, therefore, welcome this opportunity to add public credibility to our work by creating an independent mechanism of verifying that ethical guidelines are being respected without exception.

Honourable senators, we have a choice. We can stall this bill with all sorts of objections to peripheral aspects, completely lost on a public that has grown rightly sceptical of the integrity of the political process and who will cast aspersions on the Senate for putting self-serving interests before the public interest; or we can pass this bill, which is, in essence, a good bill, and give reassurance to the Canadian people that the Senate of 2003 does indeed care about the public interest and pledges itself to govern the ethics of senators' conduct, to give vibrant witness that we are putting the public interest first.

Some Hon. Senators: Hear, hear!

Senator Cools: Honourable senators, I was very interested in what Senator Roche had to say. Most of his intervention had to do, I think, with reading from a newspaper clipping.

Some Hon. Senators: Oh, oh!

Senator Cools: Is that not what happened?

Stand and speak. I will defer. Speak, my dear. Speak. She has an objection. I thought I was describing a fact that he was reading from a newspaper clipping. I made no comment on the substance of the clipping, neither did I adopt a position.

The honourable senator seems to posit — if I could read behind his mind — that Bill C-34 will somehow create ethical people, senators. I wonder about that assumption. Could the honourable senator give me some hard evidence from the past to show that senators here have not been ethical? That is my first question. My second question is, if honourable senators have not been ethical, will this bill somehow make them ethical?

Senator Roche: First, honourable senators, I did quote one paragraph from the article in *The Hill Times* this week to make my point that there is a growing body of public opinion concerning this bill of which we should be aware.

Second, nothing in my speech would cast, in the slightest way, any aspersions on any member of this chamber. That is not what I am talking about. I am talking about the perception of how we conduct our business in an age of not only increasing democratic values but increasing transparency. It is how we are perceived that is extremely important for us to consider as we move forward with this bill.

Some Hon. Senators: Hear, hear!

Senator Cools: I would like to put another question to the honourable senator. The previous question had to do with how this bill might create ethical behaviour. As the honourable senators was speaking, he has now moved the question from actual conduct and actual behaviour on to perception. I shall join him on his ground of perception. How does this bill correct the perception of which he speaks, unless, of course, the bill is itself a perception? Think about that.

Senator Roche: Honourable senators, good behaviour or ethical behaviour cannot be legislated, as such.

Some Hon. Senators: Hear, hear!

Senator Roche: What is being legislated here is a process of checks and balances that will ensure that the public understands that there are guidelines and rules and ethical values being brought into play by a Senate ethics officer that can give assurance to the public.

Senator Cools: Honourable senators, I must be sadly mistaken then. The honourable senator has just told us that the ethics officer will bring these guidelines and rules into operation. I was under the impression, according to the bill, that the rules of conduct would be brought into existence by the Senate itself, not by the Senate ethics officer.

Senator Nolin: He knows more than you.

Senator Cools: Perhaps the honourable senator has inner information or outer information, I do not know. Perhaps he has information that I do not have. I wonder if he could clarify the difference. Quite frankly, the difference is quite profound. Remember, I am trying to deal not in perceptions but in reality. I wonder if the honourable senator could comment.

• (2100)

Senator Roche: I suspect that many members feel as I do, that this debate has gone on quite long enough. Nitpicking can go on forever. What we must consider is the essence of what we are attempting to consider and to vote on here — that is, the construction of a Senate ethics officer under the guidelines of this bill. It is time, in the progress of this country, to take that step.

Hon. Senators: Hear, hear!

[Senator Roche]

Senator Cools: Honourable senators, I would like to ask the honourable senator another question, namely, whether or not he believes that the business of principles, integrity, honesty, probity and propriety are far more important than illusions and perceptions?

Senator Roche: This debate is deteriorating into a sideshow.

Senator Lynch-Staunton: Liberal contribution talk.

Senator Roche: We should stay on the principles of this bill.

Senator Cools: I am getting the impression —

The Hon. the Speaker: Senator Roche, you can clarify if you wish, but I take it you do not wish your time to be used for further comments or questions?

Senator Lynch-Staunton: He has not said that.

Hon. Pierre Claude Nolin: Honourable senators, I will be brief. I agree with Senator Roche that we need a code of conduct — a code of ethics. We can ask our committee to decide on the proper wording. We need that definitely. What we need more, however, is a process that will be transparent, workable and efficient, in which I will have confidence, you will have confidence, we will all have confidence. Do you not think that would be more proper than to be driven by perception?

I have been here for 10 years. Do you think I am preoccupied by perception? Every day when I look at my e-mails, if I were driven by perception, I would probably change jobs.

An Hon. Senator: Go to the House of Commons.

Senator Nolin: Let us do our job properly. Our burden is not only to vote for a law that will give a shot to someone else. No. We must do it ourselves. We must be in charge, but we must be in charge of a process that will be efficient, transparent and credible.

Some Hon. Senators: Hear, hear!

Hon. Donald H. Oliver: Honourable senators, I was moved after listening to Senator Grafstein earlier tonight to say a few words about Bill C-34. It is really an enactment that amends the Parliament of Canada Act, and it provides intrinsically for the appointment of a Senate ethics officer. In this framework legislation, this act of creating an officer for a code of conduct should not be punitive and scary.

As I listened to the debate — and, when I have not been here, read the debate — I find a lot of senators are nervous and afraid of some of the impacts of this legislation. That is why we are having this debate. The debate has, in fact, not gone on too long because the issues are too fundamental. Honourable senators, a code of conduct, a code of ethics or a code of conflict of interest should not be punitive. It should be user-friendly.

I must say that I agree with a lot of the remarks made tonight by Senator Grafstein. What he was trying to address, among other things, was ways to overcome some of the fears and fundamental basic concerns that many honourable senators have about this particular bill.

I am a strong advocate for a code, but it is not something that should unduly tie the hands of honourable senators. I agree that the time has come to have a code of official conduct. Part of the need for implementing a code is to recognize that service in Parliament is a public trust. As such, we should have a code in order to maintain public confidence and trust in the integrity of parliamentarians individually. A code would also help to maintain the respect and confidence that society places in Parliament as an institution.

However, this does not mean that we must be tied up in knots. The Milliken-Oliver report sets out to reassure the public that all parliamentarians are held to standards that place the public interest ahead of our own. The report also states that the code will provide a transparent system by which the public may judge this to be the case. We are not speaking of setting up criminal or quasi-legal regimes, but just a code of conduct — not even a code of ethics.

Another reason for adopting a code is that, from time to time, as we senators or individuals are called upon to serve our communities or to serve in business, occasionally there will be circumstances where we would like to inquire whether or not the act of accepting those requests might, by some, be construed as placing us in a position of conflict. In such a circumstance, it would be wonderful to have a place to go and a person to ask for advice for greater certainty and guidance on how to reconcile certain private interests and public duties.

As stated on page 13 of the Milliken-Oliver report, the Senate ethics officer would be used:

To provide advice on a confidential basis to individual Parliamentarians;

— and —

To prepare guidance and to provide courses for new Parliamentarians on matters of conduct, propriety and ethics.

At present we do not have this.

The fact that there is a request for a code in no way implies that there is an evil to be corrected. It is my view, having been here for 13 years, that all honourable senators act in the best interests of Canada, and place the public interest ahead of their own parliamentary or private interests.

In the debates before this chamber, there have been a number of concerns expressed by honourable senators that the code and the draft bill before us will unduly tie the hands and restrict the

activities of senators outside this chamber. The Milliken-Oliver report was never intended to be restrictive or onerous. Indeed, on page 4, under "Application," we read:

3) Nothing in this Code is intended to prevent or impede Parliamentarians from carrying out activities in which they ordinarily and properly engage on behalf of constituents;

5) It is recognized that maintaining a wide variety of activities outside of Parliament in addition to their parliamentary duties enables Parliamentarians to reflect better the communities from which they come and to maintain their expertise in their chosen fields. Therefore, nothing in this Code is intended to prevent a Parliamentarian who is not a public office holder from:

a) Engaging in employment or in the practise of a profession;

b) Carrying on a business;

c) Being a director, a partner, or holding an office,

So long as the Parliamentarian, notwithstanding the activity, is able to fulfil the obligations under this Code;

6) Nothing in this Code affects the privileges of Parliament or Parliamentarians, or the powers of the Speakers of each House;

Honourable senators, there is a huge difference between the principles in the Milliken-Oliver report and the bill that is before us today for study. That is the point that Senator Grafstein was making, and that is what prompted me to rise this evening. Bill C-34 invokes a statutory regime for our ethics officer. As Senator Nolin just said, it behooves us to have our own representative for our officer for code of conduct.

Margaret Young, from the Law and Government Division of the research branch of the Parliamentary Library states, on page 11 of her May 6, 2003 legislative summary on Bill C-34, the following, which is noteworthy because many senators have said that this bill clearly tracks what the Senate committee decided and clearly tracks what the Milliken-Oliver report said. Ms. Young said:

It is noteworthy that the Senate committee report on the draft Bill did not reflect consensus as to whether the office of the Senate Ethics Officer should rest on a statutory base, or should be non-statutory and completely internal to the Senate.

There was no agreement on that whatsoever.

In brief, those favouring the non-statutory approach maintained that using a statute would create a significant risk of judicial intervention into the activities of the Officer. Those favouring a statutory Officer wished to emphasize the independence of the office...

• (2110)

When I read that language, "wished to emphasize the independence of the office," I wondered how it is that you cannot emphasize the independence of an office if the office is created by resolution of this chamber? Are you saying that anything that this chamber does by resolution would not lead to independence or would be the opposite of independence?

She goes on to say:

Those favouring a statutory Officer wished to emphasize the independence of the office and noted that most Canadian provinces had proceeded by way of legislation in this area and had not run into difficulty.

That does not make it right. We are our own chamber and we can make our own rules. She said:

Bill C-34, of course, bases the office of the Senate Ethics Officer in a statute.

She then says that all of the other recommendations made by the Senate committee are reflected in Bill C-34.

Honourable senators, the way in which the officer for a code of conduct or ethics is to be put into place runs at the very heart and is the basic principle of this bill that is before us. The committee was unable to reach a consensus. The committee did not do its job. It did not do its job on something that is so fundamental that it goes to the heart and to the root of what is before us today.

I have already made remarks based on the difference of opinion. Earlier, I said that we should be careful about the method by which the ethics officer is appointed. If we do not do it right now, it is my view that it may well result in the privileges of honourable senators and the activities of the ethics officers, whose rules over conduct and privileges are the subject of this debate, being the subject of court adjudication. That is not something that most of us would like to see. This is one reason why, in 1997, our report called for the appointment of an ethics officer — we called him a juriconsult — by resolution of this chamber.

Several senators opposite have stood up and said that Bill C-34 carefully tracks the language of the Milliken-Oliver report. I respectfully submit that it does not on this one material principle point. The juriconsult was to be appointed by resolution.

It is clear to me that the refusal of the government to yield on this issue and appoint an ethics officer by resolution is the one big stumbling block that alone may produce legislation that a number of us would like to see, but it may lead to its defeat. The government would be wise to revisit this issue one more time, but this time with an open mind. What can be wrong with reverting to the principle of an officer appointed by resolution of this chamber? What is wrong with that model? I can tell you now, as I said before, that this particular model and this particular code

is already in effect in Poland and, guess what, it works extremely well. I would remind honourable senators that the report said "a juriconsult shall be an officer of Parliament."

Margaret Young, in her report to the committee, said that although there is no explicit reference to the Senate ethics officer being an officer of the Senate as requested by the committee, the intent of such a title is no doubt captured by the various references to the status of the officer and the privileges, et cetera, of the office. In other words, it is not even here that this ethics officer shall be an officer of Parliament.

After consultations with the leaders of the recognized parties, and the Speakers will table that nomination, a resolution will be passed by the Senate. Then our officer will be in place to do the job that we would like to have done.

Honourable senators, this is the fundamental difference between the Milliken-Oliver report and the draft bill before us. Bill C-34 invokes a statutory regime for an ethics officer, an issue that may challenge the very privileges of members of this chamber.

Honourable senators, for the reasons that I have just outlined, Bill C-34 should be returned to committee for further study before it is further debated in this chamber. The committee should have been afforded an opportunity to come to a resolution of this one most fundamental point. I repeat what the Library of Parliament said:

It is noteworthy that the Senate committee report on the draft Bill did not reflect consensus as to whether the office of the Senate Ethics Officer should rest on a statutory base or should be non-statutory and completely internal to the Senate.

I cannot think of anything more fundamental to this proposed legislation, Bill C-34. This says that the committee did not do its job and it should be afforded an opportunity to do it. That is it why we are in this quandary. Imagine what it would be like if they had come in with a clear recommendation, but they failed to do it. They did not do their job.

Hon. Thelma J. Chalifoux: I am not a lawyer, but I have read an awful lot of by-laws and legislation. I should like to ask Senator Oliver about proposed section 20.1. I might be wrong, but I read it differently from the senator. I read it to mean that the Governor in Council shall, by commission under the Great Seal, appoint a Senate ethics officer after consultation with the leader of a recognized party in the Senate and after approval of the appointment by resolution of the Senate.

I am getting mixed messages from the honourable senator. He says that is not what the Milliken-Oliver report says, but I read it that it is, because in my opinion the ethics officer cannot be appointed until after a resolution by the Senate. I would like his response to that, please.

Senator Oliver: The honourable senator is correct on that as far as it goes, but I was talking about the way in which the officer is actually appointed. The appointment in this particular case is by amendment to a statute, the Parliament of Canada Act, so that the officer becomes a creature of a statute and not a creature by resolution. That is the difference.

The honourable senator is quite correct that there are to be consultations, and that the matter has to come here and that there be a vote. It is the process that is different. One has a statute, and one does not. That is the difference.

Senator Chalifoux: What is the difference between the statute and the appointment? A statute is more relevant, in my opinion, because that is a law. I would like more explanation on that, if you do not mind, please.

Senator Oliver: It is a huge question, and it is a huge topic. The answer to the honourable senator's question has best been given in this chamber by Senator Joyal. He gave a very learned discussion on what happens when you use a statute, what happens to privileges, and what the courts have said here and in other jurisdictions. As a result of Senator Joyal's very persuasive argument about the dangers of using a statute, I was persuaded that the resolution approach that was recommended six years ago and tabled in both this chamber and the House of Commons is the proper, the correct, and the safe way to go.

On motion of Senator Kroft, debate adjourned.

CANADIAN FORCES SUPERANNUATION ACT

BILL TO AMEND—REPORT OF COMMITTEE

Leave having been given to revert to Presentation of Reports from Standing or Special Committees:

Hon. Jane Cordy, for Senator Kirby, Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Wednesday, November 5, 2003

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

FIFTEENTH REPORT

Your Committee, to which was referred Bill C-37, *An Act to amend the Canadian Forces Superannuation Act and to make consequential amendments to other Acts*, has, in obedience to the Order of Reference of Monday, October 27, 2003, examined the said Bill and now reports the same without amendments.

Respectfully submitted,

JANE CORDY
For the Chair

• (2120)

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator Cordy, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

CHILDREN OF DECEASED VETERANS EDUCATION ASSISTANCE BILL

REPORT OF COMMITTEE

Hon. Jane Cordy, for Senator Kirby, Chair of the Standing Senate Committee on Social Affairs, Science and Technology, presented the following report:

Wednesday, November 5, 2003

The Standing Senate Committee on Social Affairs, Science and Technology has the honour to present its

SIXTEENTH REPORT

Your Committee, to which was referred Bill C-50, *An Act to amend statute law in respect of benefits for veterans and the children of deceased veterans*, has, in obedience to the Order of Reference of Wednesday, October 29, 2003, examined the said Bill and now reports the same without amendments.

Your Committee appends to this report certain observations on the Bill.

Respectfully submitted,

JANE CORDY
For the Chair

(For text of observations, see today's Journals of the Senate, p. 1329)

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On the motion of Senator Cordy, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

[Translation]

APPROPRIATION BILL NO. 3, 2003-04

THIRD READING

Hon. Joseph A. Day moved the third reading of Bill C-55, for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004.

Motion agreed to and bill read third time and passed.

[English]

**BILL RESPECTING THE EFFECTIVE DATE OF
THE REPRESENTATION ORDER OF 2003**

**SECOND READING—MOTION IN AMENDMENT—
VOTE DEFERRED**

On the Order:

Resuming debate on the motion of the Honourable Senator Smith, P.C., seconded by the Honourable Senator Léger, for the second reading of Bill C-49, respecting the effective date of the representation order of 2003.

Hon. Pierre Claude Nolin: Honourable senators, I will try to be brief. We have heard many comments about Bill C-49. The government is asking us to reduce the period of 12 months that is already fixed in law. We are being asked to put into effect a decree of representation.

The decree was printed in the official *Gazette* in August. A year after that time, the new riding will come into force. An election after that date will be organized under the new decree of representation.

It was a good system. We have been convinced by various chief returning officers for the past 20 or 30 years — and Senator Prud'homme can correct me — that 12 months was a good and fair time for the chief returning officer to make the proper changes. There is a lot of printing involved. Appointments and training of returning officers in the new ridings must take place.

Honourable senators, we are now asked, on a one-shot deal, to reduce that 12-month period to seven months. I will not go through all the information that you have heard from various colleagues who have explained what happened a few years ago when the other place asked to postpone the delay. Some senators have explained how we are getting to that decree of representation. I will not go through that.

What is behind this bill? We need to be clear. Why are we asked to do this? We are asked to do it to give all the freedom necessary for the new Prime Minister, Paul Martin, to call an election under the new boundaries any time after April 1, 2004.

That is a political wish. He is quite entitled to do that. However, while we are asked to accommodate him, we are creating a perception — we heard about perception earlier — that is bad for Canada. It is up to us again, the Senate, to protect that.

When Paul Martin becomes Prime Minister, it will be up to him, and only him, no one else, to decide when to call an election. Do not fall into the trap that those who do not support Bill C-49 will object to the new ridings. That is false. The new ridings already exist. They were published in the decree last August. They

are already in existence for an election to be called after August 25. It will be up to Paul Martin, the new Prime Minister, to decide if he wants that election to be fought under the new boundaries, meaning an election after August, or fought under the current boundaries, meaning an election prior to August 25.

We are being asked basically to give him an option. It is almost a gift.

Perhaps the majority in this chamber wants that, but at least you have to hear the truth. It is gift to the new Prime Minister. In doing that, we would be doing the country a disservice.

[Translation]

As we have done several times in the past — always in debates on legislation concerning the electoral process — we must protect this process against any perception of political manipulation. Senator LeBreton reminded us yesterday that this process dates back to the days of Prime Minister Pearson. At the time, the manipulation of the electoral boundaries readjustment process was the purview of members of Parliament. Mr. Pearson put an end to that practice, which brought the entire federal political community into disrepute, and he was wise to do so. We must make sure to protect the other place against any temptation it might have to manipulate — and even be perceived as wanting to manipulate — this process.

• (2130)

It is our duty to protect the integrity of election officials, including the Chief Electoral Officer and elections officials in each riding. We must provide a good example for the many countries that look up to us. Protecting our international reputation is our most sacred duty.

Recently, the Chief Electoral Officer took it upon himself to publicly comment on the entire legislative process necessary to hold a general election in April instead of August. It was unfortunate of him to get involved in a political debate, but he did and we must protect him from that unfortunate statement. Let us take him at this word. New technology, the efficiency of the Chief Electoral Officer's staff, the identification and training of new presiding officers mean that this twelve-month period can be cut in half.

Honourable senators, we are being asked to amend the act just for this election. This is a one-time thing. In order to improve people's perception of this bill — and to get the chief electoral officer off the hook for an unfortunate remark he has apparently made — it would be appropriate to revisit the principle of the bill, to refer it back to the committee, and to examine the possibility of making it a permanent measure, not a one-time thing. Let us protect the credibility of the system. I would be delighted if the appropriate authorities could convince me that we can in future reduce the period from twelve to six months, any time there is a representation order.

MOTION IN AMENDMENT

Hon. Pierre Claude Nolin: For these reasons, honourable senators, I move:

That Bill C-49 be not now read the second time, but that the subject matter thereof be referred to the Standing Senate Committee on Legal and Constitutional Affairs; and

That the order to resume debate on the motion for the second reading of the bill remain on the Order Paper.

[English]

The Hon. the Speaker: Honourable senators, I must put the motion.

It is moved by the Honourable Senator Nolin, seconded by the Honourable Senator Stratton:

That Bill C-49 be not now read the second time, but that the subject-matter thereof be referred to the Standing Senate Committee on Legal and Constitutional Affairs;

And that the Order to resume debate on the motion for the second reading of the Bill remain on the Order Paper.

Is it your pleasure, honourable senators to adopt the motion?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Those in favour of the motion will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Those opposed to the motion will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "nays" have it.

And two honourable senators having risen:

Hon. Terry Stratton: The vote should be tomorrow at 3 p.m., with a half-hour bell.

Senator Carstairs: They want to defer the vote to 5:30 p.m.

The Hon. the Speaker: The opposition whip has asked to defer the vote, which he may do. The vote will be at 5:30 p.m. tomorrow, honourable senators, with the bells to ring at 5:15 p.m.

Hon. Fernand Robichaud (Deputy Leader of the Government): On a deferred vote, it is a 15-minute bell.

Senator Stratton: Very well.

Senator Robichaud: Honourable senators, I believe we have agreed.

Senator Lynch-Staunton: We will go by the rules, whatever the rules may say.

The Hon. the Speaker: We are now setting the time for the bells to ring to call in the senators before a deferred vote, the vote having been deferred at the request of the whip of the official opposition party.

I refer honourable senators to our rule 66(3):

When, under the provisions of any rule or order of the Senate, the Speaker is required to interrupt the proceedings for the purpose of putting forthwith the question on any business before the Senate or when a standing vote has been deferred, pursuant to rule 67, the Speaker shall interrupt the said proceedings not later than fifteen minutes prior to the time provided for the taking of the vote and order the bells to call in the Senators to be sounded for not more than fifteen minutes immediately thereafter. These provisions shall apply, in particular, to the disposition of non-debatable motions and any motion for which a period of time has been allocated to the disposition of the debate.

Accordingly, the bell to call in the senators for the vote at 5:30 p.m. tomorrow will ring at 5:15 p.m.

ASSISTED HUMAN REPRODUCTION BILL

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Morin, seconded by the Honourable Senator Gauthier, for the second reading of Bill C-13, respecting assisted human reproduction.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, Senator Keon was in the middle of his initial response and he has a certain number of minutes left of his 45 minutes. I move the adjournment of the debate in the name of Senator Keon, for the remaining amount of time that he has.

On motion of Senator Kinsella, for Senator Keon, debate adjourned.

• (2140)

PUBLIC SAFETY BILL, 2002

SECOND READING—ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C., for the second reading of Bill C-17, to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I wish to speak on this order tomorrow. I have been working hard to limit my remarks to my allotted time for debate, which is unlimited, and I think I can do it.

The Hon. the Speaker: Is it your pleasure, honourable senators to stand the matter?

Hon. Senators: Agreed.

Order stands.

NATIONAL ANTHEM ACT

BILL TO AMEND—THIRD READING—ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Poy, seconded by the Honourable Senator Milne, for the third reading of Bill S-3, to amend the National Anthem Act to include all Canadians.—(*Honourable Senator Prud'homme, P.C.*).

Hon. Vivienne Poy: Honourable senators —

The Hon. the Speaker: Honourable senators, there was a request from the house leader that this item stand.

[*Translation*]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, Bill S-3 is not a House of Commons bill; it is a bill that comes under Other Business. I did not ask for it to stand. Senator Poy wanted some information about what was going on. I did not say that it should stand.

[*English*]

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I rise on a point of order because a minimum degree of fairness must prevail in this place. When the item was called, I observed Senator Poy stand. I believe that His Honour did not see Senator Poy stand. Therefore, if there is a problem with that, pursuant to rule 33, I move that Senator Poy be now heard.

Some Hon. Senators: Hear, hear!

The Hon. the Speaker: Honourable senators, it may not be necessary to proceed with the motion. Senator Kinsella is quite right in that I did not see Senator Poy stand. If I am not mistaken, I was looking at my notes and I noted that Senator Prud'homme had stood the order. I believe that Senator Prud'homme said "stand."

Hon. Marcel Prud'homme: I did say "stand."

Senator Cools: We agreed.

Senator Lynch-Staunton: It is the Honourable Senator Poy's bill.

The Hon. the Speaker: I did not see Senator Poy, and I will see her now.

Senator Poy: Honourable senators, Senator Prud'homme did say yesterday that he would speak this evening. That is on the record. Would the honourable senator please indicate when he might speak?

Some Hon. Senators: Tonight!

Senator Poy: It is on the record.

Senator Prud'homme: First, would the honourable senator sit down? I am polite but either I have the floor or she has the floor.

Senator Poy: Yes, I will sit down so that the honourable senator may speak.

Senator Prud'homme: I rose to say "stand" and why should I say more? You have stood everything else so why would I not say "stand"?

We have sat all day and I as that this order stand until tomorrow. If the honourable senator wants to know the precise moment, I can say only that it will be tomorrow. I am not obliged, honourable senators; and it is my privilege to say "stand." If honourable senators do not agree, there are other ways to disagree. I said, "stand." Bill C-13 was stood for Senator Keon and Bill C-17 was stood for the Leader of the Opposition. I said, "stand" and that is it. Why should I make a deal when I am not a wheeler-dealer?

Senator Poy: Honourable senators, I would simply like an indication from the honourable senator whether he intends to speak to Bill S-3.

Senator Prud'homme: Absolutely, I will speak to the bill before the week is over. There are only two or three days left, and I assure you that I will speak.

Senator Poy: There are two days remaining.

Senator Prud'homme: I will speak because you are a fine lady. Sit down, please.

I will do the unusual and I will speak tomorrow.

Order stands.

CRIMINAL CODE

BILL TO AMEND—SECOND READING— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Joyal, P.C., seconded by the Honourable Senator Mahovlich, for the second reading of Bill C-250, to amend the Criminal Code (hate propaganda).—(*Honourable Senator Banks*).

Hon. Tommy Banks: Honourable senators, I do not believe that any person in this chamber would be opposed to the purported — if I may put it that way — intent of this bill. When I make my remarks, I am hopeful that honourable senators will remember that I am the senator who stood yesterday to suggest on a point of order that if Senator Spivak spoke to a bill that I moved, it would constitute the last speech on that bill; that is how much I know.

However, notwithstanding my agreement with the thrust of this bill, I am not certain that it has been drafted properly or that it is in the right place. As I understand it from the title of the bill, it has to do with hate propaganda. Hate propaganda is referred to in section 319 of the Criminal Code that speaks to matters having to do with offences that are the public incitement of hatred. I think that is what Bill C-250 wants to do. I could not agree with that more.

I understand the mechanical difficulty because the definition of the term "identifiable group" occurs only at section 318(4) of the Criminal Code. However, section 318 has to do with advocating genocide, not with an offence that would have to do with inciting hatred. They are both reprehensible but they are quite different.

I understand that it might be convenient to make the amendment in section 318, although it may belong in section 319, because that is where the definition is given. Otherwise, it becomes a drafting problem, which I think might have occurred if one had to put into section 319 a different listing of a definition of "identifiable groups" to which this offence would apply.

I have not heard — and it may simply be ignorance — of anyone actually advocating genocide against another of a particular sexual persuasion, even against sexual persuasion other than that which is intended by this bill. Nevertheless, I do not think that the point of Bill C-250, which has to do with hate propaganda according to its title, properly belongs in a section of the Criminal Code that speaks to advocating genocide.

• (2150)

In short, when this bill moves to committee for study, which I hope it will soon, I hope that the committee will consider whether creating a criminal offence for the advocacy of hate propaganda directed against persons on account of their sexual orientation ought not properly be an amendment to section 319 of the Criminal Code rather than to section 318.

I hope, honourable senators, that we will complete second reading and move this bill to committee very soon, because it deserves to be studied.

Hon. Jeremiah S. Grafstein: Honourable senators, I should like to comment historically on the matter of sexual orientation and plans to exterminate those of a specific sexual orientation. Part of the master plan that was enunciated in the documents following out of Nazism was precisely that. There was some discussion of that in our debate on the bill memorializing the Holocaust. There was a clear plan to exterminate those who were disabled by means of two methodologies: by scientific experiment and by extermination if they were to survive those experimentations. There was also a clear plan to rid society of this element, and they used much harsher language than that. Therefore, this is not something that is unknown to the 20th century.

An historical analysis will demonstrate that that also applies to a number of other autocratic regimes.

Senator Banks: Honourable senators, that is a well-known historical fact. I am not sure, however, that it is part of what was contemplated in a bill, the purpose of which is to stop hate propaganda. The bill may be described wrongly or incompletely. If the bill means to include making an offence the advocacy of genocide against people because of their homosexual association, or whatever other sexual orientation they might have, then it ought to say so, and then it would be properly in both places.

As I said, honourable senators, I am not competent to pronounce on these questions. I believe it is a question that ought to be looked at when the bill is studied in committee, because one or the other of those things is wrong.

Hon. Pierre Claude Nolin: Is the honourable senator questioning why the definition is in a section that refers not to hate but to another crime?

Senator Banks: That is correct. Bill C-250 modifies subsection 318(4) of the Criminal Code. Section 318 of the Criminal Code deals with the advocacy of genocide. I understand that that section contains the list and that makes it easier to interpret, but I think that the intent of Bill C-250 is to make the offence under the act apply to section 319 of the Criminal Code. That is what I read to be the stated intent of the bill, although I may be wrong. However, if so, that is where it ought to be.

The answer to Senator Nolin's question is yes.

Senator Nolin: The criminal infraction already exists. It refers to a group or identifiable group, and the definition of those groups is there. That is why the sponsor is proposing to change a definition that applies to other infractions. The infraction already exists; it is only the list that needs to be amended.

Senator Banks: I understand.

Senator Nolin: Is that the only concern?

Senator Banks: Yes.

Hon. Joan Fraser: I am sure that Senator Banks knows how much respect I have for Senator Gustafson and for his freedom to speak on all matters in this chamber. Nonetheless, does Senator Banks agree with me that the basic principles of this bill have been discussed in this chamber and that, if there are questions about it, the best thing to do now would be to move on to the committee study phase, with respect for all senators.

It seems to me that we are reaching the stage in this debate where the kinds of questions that are being raised would be best addressed in a committee study. It is no secret to any honourable senator that I support this bill. I have just signed another 50 letters to people who wrote to ask my views about it. Whether or not I support this bill, would Senator Banks agree that second reading and committee study is where we should be going now?

Senator Banks: I can only reiterate what I said when I was putting forward the idea of the question, that being that I hope the bill will be studied in committee and that it will be referred to committee as fast as possible.

Hon. Leonard J. Gustafson: Honourable senators, I move the adjournment of the debate.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Will those in favour of Senator Gustafson's motion please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will those opposed to Senator Gustafson's motion please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "nays" have it, although it was rather soft.

Senator Cools: Do it again!

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators. It is a one-hour bell.

Hon. John Lynch-Staunton (Leader of the Opposition): I admit that I am not as alert as I could be because we have had late evenings for too long. Yet, I should be more alert.

I ask respectfully: Was Senator Gustafson's motion to adjourn the debate agreed to?

The Hon. the Speaker: It is not clear to me. I said that it was not agreed to and two senators rose, which is the signal for a division. Perhaps they were rising for reasons other than to request a division.

Is it your wish, honourable senators, that I follow Senator Cools' request and ask again for the "yeas" and the "nays"?

Hon. Senators: Agreed.

The Hon. the Speaker: I will do so.

• (2200)

It is moved by the Honourable Senator Gustafson, seconded by the Honourable Senator Oliver, that further debate be adjourned to the next sitting of the Senate.

Will all those in favour of the motion please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will all those opposed to the motion please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators.

There will be a one-hour bell, unless there is unanimous agreement to a shorter bell.

Hon. Bill Rompkey: Would it be agreeable to have a 15-minute bell?

Senator Cools: No.

Senator Lynch-Staunton: You have no say. It is up to the whips.

Hon. Terry Stratton: We are not certain of what is happening over in the Victoria Building. What about a 20-minute bell?

Senator Rompkey: Agreed.

The Hon. the Speaker: Honourable senators, is it agreed that we have a 20-minute bell before the taking of the vote?

Some Hon. Senators: Agreed.

Senator Cools: No.

The Hon. the Speaker: There being a dissenting voice, it is a one-hour bell.

Senator Lynch-Staunton: No, it is between the whips.

• (2300)

Motion negated on the following division:

YEAS THE HONOURABLE SENATORS

Angus	Lynch-Staunton
Beaudoin	Moore
Cochrane	Oliver
Cools	Robertson
Forrestall	Sparrow
Gustafson	St. Germain
Kenny	Stratton—14

NAYS THE HONOURABLE SENATORS

Bacon	Losier-Cool
Banks	Maheu
Carstairs	Milne
Chalifoux	Nolin
Chaput	Pearson
Christensen	Pépin
Cordy	Prud'homme
Downe	Ringuette
Fairbairn	Robichaud
Fraser	Roche
Gill	Rompkey
Grafstein	Smith
Graham	Trenholme Counsell
Hubley	Watt
Joyal	Wiebe—31
Kroft	

ABSTENTIONS THE HONOURABLE SENATORS

Nil

The Hon. the Speaker: Resuming debate.

Senator Lynch-Staunton: Honourable senators, I want to make a few comments. I support this bill. I do not think it is necessary, but I support it. If it gives reassurance to a certain segment of our society, so be it. However, I think that segment of society is protected by other legislation.

What I deplore is that Senator Gustafson was not given the time needed to carry on the debate tomorrow. What I cannot understand is why we are, again, in this rush to get things through. What I cannot understand is why the government cannot tell us why we are here this evening, why this bill cannot, when it goes to committee, be studied thoroughly and be reported back in due course.

Are we here only until Friday?

Senator Smith: Probably.

Senator Lynch-Staunton: And then what?

Senator Smith: I cannot speak for the government.

Senator Lynch-Staunton: No one is speaking for it. That is a problem with the Senate right now. No one is speaking to our schedule and our agenda. We want to know.

Why is Senator Gustafson being refused the right to give his views on this bill tomorrow? What is so important that this bill must be dealt with now? Can no one answer me?

After what has happened, I am very tempted to move the adjournment of the debate, but I will not because I have too much respect for the individuals in this place who are getting as tired as I am. However, I still feel that we are being manipulated and used for one purpose. I do not accept the purpose, unless it is confirmed by the other side.

I do not understand why we have to rush Bill C-34 through. I do not understand why we have to be here on Friday morning to do whatever.

According to our calendar, we are to be called back on November 17. As far as I know, that is our calendar. It runs until December 20, 21 or 22, when we are to be here.

This place is being operated, or manipulated, in such a way that we are supposed to do everything the government wishes within the next 72 hours. Can someone confirm that I am right or wrong?

Meanwhile, I find it deplorable that Senator Gustafson will not be allowed to speak tomorrow on a bill about which he feels strongly and on which he is being forced to speak tonight.

If someone else has any respect for this place, they will adjourn the debate after he has spoken.

Some Hon. Senators: Hear, hear!

The Hon. the Speaker: Does any honourable senator wish to respond on house business?

Hon. Marcel Prud'homme: Honourable senators, Senator Lynch-Staunton has made a valid point. I should like to ask Your Honour a more precise question. If I understood well, the result of the vote which was just taken means that Senator Gustafson, who would have preferred to speak tomorrow, must either speak tonight or not speak at all.

Senator Lynch-Staunton said that he has too much respect for this institution to move a motion to adjourn the debate. I could call for the adjournment motion. I know that at midnight we will no longer be allowed to sit. Therefore, if someone were to say, "I move that the Senate do now adjourn," we would rise at midnight. As a result, for all practical purposes, the rights of Senator Gustafson to speak tomorrow would be protected, since we would have to reconvene tomorrow.

I would ask Your Honour to rule if I am correct in my interpretation. I may then decide, as unpopular as it may be, to do what Senator Lynch-Staunton wanted to do but did not do.

I have been pushed enough. I ask Your Honour for direction, if there were to be such a motion. I do not have the rule book, and it is late.

I want to know, if there were a motion to adjourn and a vote, at what time that would be.

The Hon. the Speaker: As far as I am aware, there is no motion to adjourn. We have just voted on such a motion put by Senator Gustafson. Senator Lynch-Staunton had what I am interpreting as a question on house business. The floor then goes to Senator Gustafson to speak if he wishes. I now recognize him. It is very dangerous for me to speculate on what happens after that, honourable senators.

• (2310)

Some Hon. Senators: Hear, hear!

The Hon. the Speaker: However, I would invite senators to consult the Table if they need answers to questions on procedural matters.

Senator Gustafson: Honourable senators, I am pleased to be given the opportunity to speak. If I have caused any problems, well, I have caused problems. However, I feel strongly about this bill and I want to make some brief points.

First, we in Canada are all equal under the law. As far as I am concerned, under the code, Revised Statutes of Canada 1985, we are equal before the law. Why do we have to start adding to the list? If we start adding to the list, where will it end? If honourable senators look at section 318(4), it says "colour, race, religion or ethnic origin." That is pretty straightforward. We are equal before the law, which is the main point I want to make here tonight.

I am receiving volumes of mail in my office, as are all honourable senators. This afternoon I read letter after letter from good, honest Canadian people who have strong feelings about

this piece of legislation, Bill C-250. They are very concerned about this legislation. They are from all denominations, backgrounds and different areas of the country, and they are very concerned about this bill.

Should we just take this bill for granted and railroad it through this house without giving it some consideration? I think not. That is wrong. I do not like to give other examples, but there is the gun control bill, for instance. If we had just taken a little time to deal with the registration of firearms, we would have saved this country tremendous cost — roughly \$1 billion — and embarrassment.

This is probably a much more important issue than gun control, because the issue of the \$1 billion will get straightened out somehow. Someone will give and take, even though it did not work very well. We would have been better off not to railroad that bill through, but to take more time to deal with the legislation.

I remember going up North with the native people. They were not heard, the farmers were not heard, and we railroaded through some bad legislation. Let us not do that with this bill. When it does go to third reading, let us look at it carefully. Let us consider the position of the Canadian people and what they are saying.

I sat in the House of Commons for 14 years. I was privileged to serve the people. I never saw it as "my riding," I saw it as the riding I served. We are here in the Senate to serve the people of Canada. When we get volumes of mail on our desks, we can be sure that there is something of concern in the conscience of the Canadian people.

I said that I would not go on too long, and I will not. I will make three points, honourable senators. We stand equal under the law as Canadians, and I am very proud of that. We should consider the conscience of the Canadian people and the volumes of mail we receive on an issue, and especially on this Bill C-250. Let us stop railroading through legislation without giving it a proper hearing in this assembly here in the Senate.

I have great respect for this place. I have great respect for the people who are sent here. I have said many times, from my experience of sitting in both Houses, that the calibre of the appointed people in the Senate is far above the calibre of those who have been elected. I believe that. I have seen it.

Senator Forrestall: We are not too bad.

Senator Gustafson: You are not bad.

Senator Forrestall: You are not bad yourself.

Senator Gustafson: I thank honourable senators for the opportunity to say a few words on this bill tonight. I hope that each senator will take into consideration what our people are telling us, what our consciences are saying and whether this is really necessary legislation at this time.

Some Hon. Senators: Hear, hear!

Hon. W. David Angus: I move the adjournment of the debate.

The Hon. the Speaker: It is moved by the Honourable Senator Angus, seconded by the Honourable Senator Stratton, that further debate be adjourned to the next sitting of the Senate.

All those in favour of the motion will please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: All those opposed to the motion please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "yeas" have it.

Motion agreed to and debate adjourned, on division.

HAZARDOUS PRODUCTS ACT

BILL TO AMEND—SECOND READING— DEBATE ADJOURNED

Hon. Colin Kenny moved the second reading of Bill C-260, to amend the Hazardous Products Act (fire-safe cigarettes). —(*Honourable Senator Robichaud, P.C.*).

He said: Honourable senators, the hour is late and I will be brief. This bill is about cigarettes and it is about cigarettes that do not go out easily. You could call it the fireman's bill. It is designed to protect people who have fallen asleep in bed and have been killed when their mattresses have caught on fire.

The figures are somewhat startling. It is estimated that the number runs as high as 350-odd people a year; 1,500 injured and \$200 million in property damage. It is a worthy cause and it is a concern that all of us should have to protect ourselves.

The bill, as honourable senators will see, is a short bill. It is a page and a half and it is very simple. The bill asks for the Minister of Health to come forward by June 30, 2004, with regulations that would specify how these cigarettes should be manufactured. If the minister does not come forward by June 30, 2004, the minister is then required to prepare a report and cause a copy of the report to be tabled in both Houses, and that each House would refer the report to the appropriate committee. The report would include an explanation as to why the regulation has not been made. The report would list the safe cigarette legislation that is in force in North America and summaries of scientific studies on the subject.

This bill is very straightforward, honourable senators. There are no regulations in the bill. There are no details beyond that in the bill. It is a simple request to the minister: Make the regulations or come before both Houses and explain why you have not made the regulations.

I am sure all members of this chamber share the objective of having cigarettes on the market that will be safer, and this is simply a process that would ask the minister to come forward with regulations that would describe how that could happen, or tell us why they are not doing that.

• (2320)

That is a brief summary of the bill, and that concludes my remarks.

Hon. Mira Spivak: Honourable senators, I am supportive of this simple and eloquent bill that will undoubtedly save lives, reduce injuries and prevent needless destruction of homes and property. Perhaps it will even reduce the incidence of forest fires, something we would all like to see after the horrific damage to our forests in British Columbia this year, followed by the devastating scenes in California and Mexico.

Fire-safe cigarettes sound like an oxymoron, but that is only because for more than a century governments everywhere have allowed manufacturers to produce cigarettes that continue to burn when they are left in an ashtray, fall on a couch, or are carelessly tossed from the car to the highway.

By altering the density of tobacco in their products and the quality of paper, manufactures can produce cigarettes that extinguish themselves when left unattended. The first patent on a fire-safe cigarette was issued in the U.S. in 1889. It is certainly time that we joined other jurisdictions, such as New York State, to give legal incentives for manufacturers to produce them.

The promise of this bill — scores of lives and millions of dollars saved every year — is so great that one can only wonder why the government has not already amended the act and its regulation. The fact that it has not done so is yet another example of the regulatory powers beyond the direct reach of Parliament that has such a direct and pervasive impact on the lives of Canadians. We have this bill that would not automatically force the minister to change the regulation, and, as Senator Kenny has explained, the minister has a choice.

It is certainly a bill that deserves our support, and one that I hope we would dispatch without delay.

Hon. Marcel Prud'homme: Honourable Senator Spivak has touched all the points I wanted, and she did it in a more eloquent way than I could do it. I have spoken about that with Senator Kenny. I share your opinion.

Hon. Lucie Pépin: I move adjournment of the debate.

The Hon. the Speaker: It is moved by the Honourable Senator Pépin, seconded by the Honourable Senator Rompkey, that further debate be adjourned to the next sitting of the Senate.

Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: No.

The Hon. the Speaker: The motion is passed, on division.

Do honourable senators want a standing vote? I will ask the question: Those in favour of the motion to adjourn will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Those opposed to the motion to adjourn will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "yeas" have it.

Motion agreed to and debate adjourned, on division.

STUDY ON ISSUES AFFECTING URBAN ABORIGINAL YOUTH

REPORT OF ABORIGINAL PEOPLES COMMITTEE— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Chalifoux, seconded by the Honourable Senator Milne:

That the sixth report of the Standing Senate Committee on Aboriginal Peoples be adopted and that, pursuant to rule 131(2), the Senate request a complete and detailed response from the Government, with the Ministers of Indian Affairs and Northern Development, Justice, Human Resources Development, Canadian Heritage, Health, and Industry; the Solicitor General; and the Federal Interlocutor for Métis and Non-status Indians being identified as Ministers responsible for responding to the Report.—(*Honourable Senator Johnson*).

Hon. Landon Pearson: Honourable senators, this item was standing in the name of Senator Johnson, and it will go back into her name when I finish speaking tonight.

I wanted to say what a privilege it has been to serve on this committee. Senator Chalifoux was an extraordinary chair. Her vision has shaped the whole process of this positive action plan for urban Aboriginal youth. It was exciting to be able to talk to so many young people who are doing quite well, and we got many ideas about how to do better.

I believe we came out with some excellent recommendations that I want to commend in particular because we heard so much from these young people about the importance to them of sports and of the arts. I felt that this was an extremely gifted community

that has lots of opportunity. I would like to commend them to the attention of all the people who took part in that study and who are here in the Senate. I would ask them to read that report attentively to see how we can build on it, and to have an action plan that makes a difference for young Aboriginals.

On motion of Senator Pearson, for Senator Johnson, debate adjourned.

[Translation]

STUDY ON PUBLIC INTEREST IMPLICATIONS OF BANK MERGERS

REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE—DEBATE CONTINUED

On the Order:

Resuming debate on the consideration of the Sixth Report of the Standing Senate Committee on Banking, Trade and Commerce entitled "Competition in the Public Interest: Large Bank Mergers in Canada", tabled in the Senate on December 12, 2002.—(*Honourable Senator Lynch-Staunton*).

Hon. Marcel Prud'homme: Honourable senators, I want to thank the Honourable Senator Lynch-Staunton for having taken the adjournment on this item. I will just say a few words and speak again to this issue at a later date. I was a member of this committee. I was opposed to the mergers. The committee was said to be unanimous. I will speak in due course, but tonight is not the right time. I take a particular interest in this issue as member of the banking committee. I would like to pursue this debate at a later date, in November or in December.

[English]

The Hon. the Speaker: You wish to speak before Senator Lynch-Staunton, I gather?

Senator Prud'homme: He is a senior officer of the house, so if he wants to speak, he will speak first. However, he does not mind if someone else speaks. He will take it back under his name, will he not?

Senator Kinsella: We are all equal. There are no senior members.

The Hon. the Speaker: The best thing is to let the order stand in Senator Lynch-Staunton's name. Then, if you wish to speak, you may do so. Otherwise, you have used up your speech now.

Senator Prud'homme: I will leave it under the honourable senator's name. I just wanted to show my great interest in this matter, because he saw things that I did not see.

HUMAN RIGHTS

FACT-FINDING TRIP—OCTOBER 10-17, 2003—
REPORT—DEBATE SUSPENDED

The Senate proceeded to consideration of the seventh report of the Standing Senate Committee on Human Rights (fact-finding mission), tabled in the Senate on November 4, 2003.
—(*Honourable Senator Maheu*).

Hon. Shirley Maheu: Honourable senators, I rise tonight to speak on the seventh report of the Standing Senate Committee on Human Rights, regarding its recent fact-finding mission to Geneva, Switzerland and Strasbourg, France from October 10 to 17.

Honourable senators, the purpose of this motion to the United Nations was to help committee members to better understand Canada's international obligations within the UN and to get a bird's-eye view of the structure of human rights protection and promotion at the international level.

Canada has ratified a number of international instruments, the aim of which is to protect human rights, and it plays a primary role in protecting these instruments. Canada's courts, the Supreme Court of Canada in particular, increasingly consider Canada's international obligations when interpreting the provisions of the Canadian Charter of Rights and Freedoms and provincial charters and statutes for the protection of human rights.

Today, I am proud to say that this visit to the human rights bodies in Geneva and Strasbourg has allowed the committee to expand its knowledge of the international human rights system. Indeed, the mission was very educational.

• (2330)

[*Translation*]

Honourable senators, our delegation consisted of Honourable Senators Laurier LaPierre, Gérard Beaudoin and myself and we were accompanied by Line Gravel, our clerk.

In Geneva, we spent three days in intensive consultations with the Office of the High Commissioner for Human Rights, the International Parliamentary Union, the United Nations High Commission for Refugees, the International Labour Organization, the World Health Organization, and the International Committee of the Red Cross, and met with the Human Rights Committee over a working lunch. The delegation also met for round table discussions with several non-governmental organizations that work on human rights at the international level.

[*English*]

At the office of the UN High Commissioner for Human Rights, the delegation learned about the general operation of the seven treaty monitoring bodies. These seven treaties are the International Convention on Economic, Social and Cultural

Rights, the International Convention on Civil and Political Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment, the Convention on the Rights of the Child, and the International Convention on the Protection of the Rights of Migrant Workers and Members of Their Families.

During its visit to the Geneva office, the delegation inquired about Canada and the compliance with the provision of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The delegation was informed that Canada's record is quite good, despite a few cases that they have had before them. We also learned that Canada's cooperation in all cases has always been good.

[*Translation*]

In Strasbourg, we spent two days at the Council of Europe and the European Court of Human Rights. The delegation had the privilege of seeing the Court in action and talking to leaders at the institutions about issues of the day.

For instance, we met with the Director General of Human Rights, the head of the division for equality between women and men, the head of the execution of judgments of the European Court of Human Rights, and the administrator of the European Committee for the Prevention of Torture.

The delegation was informed about the role of the Parliamentary Assembly within the various instruments for the protection of rights in Europe and about the creation of the European mechanism for the protection of human rights.

[*English*]

We also inquired into areas of application of the European Social Charter as a model in Canada. After discussing this issue with European experts, we concluded that the Standing Senate Committee on Human Rights should request, in the future, permission from the Senate to study this question in greater detail.

Honourable senators, it is clear that the United Nations recognizes Canada as a world leader in the promotion and protection of human rights. Canada's leadership in the international forum, both regional and universal, speaks loud and clear about our country's commitment to human rights.

In order to continue this leadership, I believe that it is important that all parliamentarians learn about international human rights bodies. This is why I strongly recommend that the committee undertake to send small delegations on an educational visit every year, or at least every session. This would allow all members to expand their knowledge on human rights issues.

[Translation]

Hon. Gérald-A. Beaudoin: Honourable senators, Senators Maheu and LaPierre and myself were in Geneva on October 13, 14 and 15, and in Strasbourg on October 16 and 17. In our report, we indicated that Canadian courts, the Supreme Court of Canada in particular, take into consideration the provisions of the Canadian Charter of Rights and Freedoms intended to protect people's rights. This principle comes from the Supreme Court in *Baker*, and I am glad of it.

Our days in Geneva and Strasbourg were very full. We met with a number of very important people. Among them were Maria Francisca Ize-Charrin of the Office of the High Commissioner for Human Rights, and VIPS from the international parliamentary union, the UN High Commission for Refugees, the World Labour Organization, the World Health Organization, the International Committee of the Red Cross, and the Human Rights Committee. Our report contains a complete list. We received a great deal of assistance from Ambassador Sergio Marchi in Geneva and Ambassador Jean-Paul Hubert in Strasbourg.

We spent two days at the Council of Europe in Strasbourg at the European Court of Human Rights, and attended one hearing. I particularly enjoyed that. We also spoke with the President of the ECHR, Luzius Wildhaber, and his Registrar, Paul Mahoney. President Wildhaber is familiar with Canada because he was asked to provide an opinion on the clarity bill. He is also well known in Canada. We were able to spend some 30 or 40 minutes with this excellent jurist.

The second part of the mandate the Senate assigned to the delegation concerned the European Social Charter. The delegation gathered information on this and discussed it with the European experts. The conclusion we reached was that the Standing Committee on Human Rights ought to seek leave of the Senate to go into this in greater depth in the near future.

At the request of my colleague, Senator Noël Kinsella, I asked the following question relating to education: Is it not true that article 13 of the International Covenant on Economic, Social and Cultural Rights stipulates that education must be provided free of charge at the primary, secondary and university levels?

The answer I received was that this seems to be a controversial issue. In our report, we state:

[English]

Delegation members believe that the subject is open to debate and that there is a considerable gap between theory and practice in this area.

[Translation]

I should provide some clarification. I would have preferred us to say that the subject of education remains to be debated, but

that we hope that education will be free at the primary, secondary and university levels. That is what I said. In my opinion, the wording of article 13 of the Covenant is very clear. This is what article 13 says:

1. The States Parties to the present Covenant recognize the right of everyone to education.
2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:
 - (a) Primary education shall be compulsory and available free to all;
 - (b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;
 - (c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;
 - (d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;
 - (e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

• (2340)

I do not see why the question is considered debatable. The question is very clear, and so is the response. Education at the primary, secondary and university level should be free. But we are a long way from that ideal in North America, as tuition fees keep rising. We need to look more thoroughly at the response Canada gave in its report on the subject of article 13 of the Covenant.

[English]

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Would Senator Beaudoin answer a question for clarification?

Senator Beaudoin: Of course.

Senator Kinsella: The honourable senator said that the delegation went to Geneva. I tried to get a copy of the report that is before us, but we do not seem to have one around here. However, I was told that I may get one tomorrow. Did I understand the honourable senators to say that your delegation's report states that it is debatable whether article 13 of the International Covenant on Economic, Social and Cultural Rights requires that states parties are obliged to take steps to progressively introduce re-education at the higher education level?

[Translation]

Senator Beaudoin: Honourable senators, I believe my colleagues share my opinion that primary, secondary and postsecondary education must be free. From having worked for many years in postsecondary education, I realize that the opposite has happened in Canada and the United States, where it costs a fortune to become a lawyer, doctor or professional in another field.

This concerns the wording, but, in my opinion, if the international covenant declares that primary, secondary and postsecondary education shall be free, than Canada should act accordingly. Everyone seems surprised at this, but making each of these three levels of education free, overnight, will cost the state a great deal. However, Canada signed the covenant. We must respect our commitments.

Someone commented that this was up for discussion. I say it is not, since it clearly states in black and white, in both French and English, that education is less expensive in Quebec. Primary, secondary and postsecondary education must be free. In France, with the exception of certain basic fees, education is free. But postsecondary education in Canada or the United States, be it at McGill or Harvard, is extremely costly.

How is it that, in North America, the land of plenty, there is no such thing as a free education? I was shocked to learn this. I cannot wait to see Canada's report on its efforts, if any, to make the education system free at all three levels. We must follow through on our commitment under the International Covenant on Economic, Social and Cultural Rights — and I greatly respect such rights.

We must make education free. We have held a debate on this. I had a duty to speak about this and, in my report, I mentioned that education in Canada must be free. That is democracy. A great democracy like Canada should be able to do this.

[English]

Senator Kinsella: Honourable senators, I do now have a copy of the report. At page 3 of the English version, at line 12, the report states as follows with reference to the question that was asked by Senator Beaudoin as to the meaning of article 13 of the International Covenant on Economic, Social and Cultural Rights.

The answer was yes as to whether or not article 13 provides that higher education is to become progressively free. Then the report states that the delegation members believe that the subject is open to debate and that there is a considerable gap between theory and practice in this area.

Have I understood the honourable senator correctly to say that that is not his position? His position is that the covenant is quite explicit?

Senator Beaudoin: Yes.

Senator Kinsella: Two other members on the delegation believe that the covenant is open for debate. I do not know how we should deal with this, honourable senators.

Honourable senators can believe whatever they wish to believe. I suppose, but we have a report from a committee. I am sure that our friends in Geneva would have found it rather strange that a delegation from the Senate of Canada would be saying this about a provision of an international treaty that was ratified by Canada with the written agreement of every province in Canada in 1976. We have had a lot of experience with this international treaty and, by the way, this is a real treaty. It is governed by the Vienna Convention on Treaty Law.

The treaty provides that there is a progressive obligation for the states parties to provide for freer post-secondary or what they call higher education. In this report, we say that here are members of the delegation from the Senate of Canada saying that that is open to debate.

I respectfully submit that they are absolutely wrong. At least there was a divergence of view in the delegation that went there. My question is this: Did the honourable senator raise that question with Mr. Bertrand Ramcharan? Did he meet with Mr. Ramcharan at the human rights office in Geneva?

Senator Beaudoin: Yes, I asked the question. The third member of our report will make a presentation on this report, probably tomorrow. I believe that is how it is written. I do not think that we disagree on the point that education should be free. We did agree on that. I will ask the secretary of the committee to redraft that sentence.

• (2350)

I was very pleased by the answer that was given, because for the first time I realized that we have an international obligation to provide free education at the three levels. That is wonderful. Formerly that applied only to the primary level of education. It may also have applied at the CEGEPs in Quebec. I do know that university level education is expensive. That should also be free. As a result of this debate on the drafting of the sentence referred to, the sentence should be corrected.

[Translation]

The Hon. the Speaker pro tempore: Honourable senators, the honourable senator's time has expired. Do you seek leave to continue?

[English]

Senator Beaudoin: One more minute.

The Hon. the Speaker pro tempore: Is it agreed?

Hon. Senators: Agreed.

Senator Beaudoin: This is the first time that I have had an opportunity to debate free education in Canada at three levels. It is extraordinary.

We should redraft the paragraph because I am sure that we do not disagree on the question. Who is against free education at the university level? The Americans who attend Harvard and Yale, at the Faculty of Law, certainly know that that costs a lot.

Senator Prud'homme: How much?

Senator Beaudoin: It costs many thousands of dollars.

Canada and United States are great democracies. We are rich enough to implement our international obligations. This is why I put my finger on that paragraph of the report.

I agree with my colleague that the wording is inadequate. It should be redrafted. I do not think that we disagree on this. We certainly all agree that, if it is in the international pact, we must provide free education. I think we should do it. I wish it to be stated clearly that education should be free. All students in Canada would be very happy to see that sentence in our report.

Hon. John Lynch-Staunton (Leader of the Opposition): There is no such thing as free education. There is no such thing as free Medicare. Would the honourable senator tell me how we would support thousands of university students whose education costs millions of dollars if they were to suddenly be allowed to attend the university system free of charge? Theoretically, it is a marvellous idea, but how can we afford it?

Senator Nolin: We have signed this convention.

[Translation]

Senator Beaudoin: The International Bill of Human Rights states:

We must actively pursue the development of a school network at all levels, establish a suitable scholarship system and continually improve the material conditions of the teaching staff.

At the international level, they recognize that this is a long process. However, since there is money for other needs, why not for education? This even appears in the Constitution. Section 16 of the charter says that English and French have equality of status. We must do everything in our power for this to continue. The same is true of education; this takes time. If a country such as France can do it, I do not see why countries such as the United States and Canada cannot.

This will not happen overnight. The international covenant is very well written. It says that this will be attainable by the progressive introduction of free education. We will probably not live to see the day, but at least our children and grandchildren will one day be able to benefit from free education.

I agree with the Leader of the Opposition that this will not happen overnight.

[English]

Senator Kinsella: I would congratulate our honourable colleagues who did take the initiative to visit Geneva and

Strasbourg and to, first, advise those international centres that are the key centres in the world that deal with human rights development of our advances here in Canada. However, I must say the subject of our debate now is this report. There is an error in the report on page 3, line 12.

The international convention has been ratified by Canada. Canada has accepted this programmatic right of the right to education, and the provinces have agreed in writing that we would take steps to progressively implement health rights, labour rights and educational rights. Article 13 paragraph 2 is explicit. It says that higher education will become progressively freer. Those are the words in the treaty.

The earlier article says that "being a social right," it operates in terms of enforcement, on the basis of a social audit. There is absolutely no debate as to the objective. It is clear-cut, to use the expression of my honourable colleague.

Senator Beaudoin: Yes.

Senator Kinsella: The report states that our delegation believes that the subject matter is open to debate. There is no debate. It is in black and white, signed off by every province in Canada and by the federal government.

When the Privy Council passed the minutes that Canada would deposit the instrument of ratification, it did so accepting the treaty as is. All I am suggesting — and perhaps we might get agreement — is that we would simply delete the sentence where it is stated that the delegation members believe that the subject matter is open to debate, and that there is a considerable gap between theory and practice in the area.

If that were deleted, I would vote in favour of the report. However, with that sentence included in the report, I believe the report is quite inaccurate.

Hon. Tommy Banks: Will the Honourable Senator Kinsella accept a question?

Senator Kinsella: Yes.

Senator Banks: It is not entirely frivolous. I do not know what the translated words would be in the treaty, but in referring to the lexicon, if the treaty states, "progressively freer," that will not work, because "free," like "unique," is something that cannot be modified. It either is or it is not. Perhaps the use of the word "freer" should be considered.

Debate suspended.

• (2400)

The Hon. the Speaker pro tempore: Honourable senators, pursuant to rule 6(1), it being twelve o'clock midnight, I declare that the motion to adjourn the Senate has been deemed to have been moved and adopted.

The Senate adjourned until Thursday, November 6, 2003, at 1:30 p.m.

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Debates of the Senate

2nd SESSION

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37th PARLIAMENT

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OFFICIAL REPORT
(HANSARD)

Thursday, November 6, 2003

—

THE HONOURABLE DAN HAYS
SPEAKER

A red circular stamp is located in the bottom right corner of the page. It contains the text "OFFICIAL REPORT" and "HANSARD" in a circular arrangement, with the date "NOV 11 2003" in the center.

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(Daily index of proceedings appears at back of this issue).

OFFICIAL REPORT

CORRECTION

Hon. Marcel Prud'homme: Honourable senators, we have spoken so late every night that I did not have time to correct my blues. I will be honest: I went home like everyone else.

With permission of honourable senators, I have a correction on page 2545 of the November 4 *Debates of the Senate*. The words, "I attended at an event last week" will make absolutely no sense if you read the rest of the text. I wish, with the kindness of honourable senators, to have the text read instead: "The event was sponsored," and not that I attended an event, because I was not there.

People read it and wrote and phoned me and said, "You were not there." Of course, I was not there. I was here.

With the permission of the Senate, I ask for the usual courtesy. I just wish to change "I attended at an event last week sponsored" to "The event was sponsored." I would be very happy with the French translation.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

THE SENATE

Thursday, November 6, 2003

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

[Translation]

SENATORS' STATEMENTS

UNITED NATIONS

ACCESS TO CLEAN WATER

Hon. Madeleine Plamondon: Honourable senators, I would like to bring to your attention a problem that should concern all of us: access to clean water.

In 1950, there were 2.5 billion people in the world, and today there are 6 billion. Over that time, the amount of renewable water resources per capita has dropped 58 per cent.

In 2025, two-thirds of the world's population will be faced with serious water shortages. Seventy per cent of water-borne diseases are avoidable.

Why should we care, honourable senators? First of all, because water is a gift. All too often, we take water for granted: the water we drink, the water we use for cooking, the water we bathe or swim in. Water plays a symbolic role in all religions, purifying, refreshing, and giving life.

Access to water is a human right, yet one person in six does not have access to clean water. In Africa and Asia, women have to go an average of six kilometres every day, carrying water containers that weigh as much as 20 kilograms. One person in two is exposed to contaminated water. There is one water-related death every 14 seconds.

We Canadians are not exempt from water shortages. There are often bans on watering lawns and washing cars, but we never lack water to drink.

Water is not a commodity. When governments run into financial problems, they are tempted to privatize water treatment and distribution. This means that families no longer able to pay their bill will have their service cut off. Every time there is privatization, costs go up considerably.

In Manila, costs have escalated, leaving one person in five without water service. Since 1994, 10 million people in South Africa have had their water cut off. In Canada, seven people died from drinking contaminated water in Walkerton in June 2000.

Water is a communal inheritance that deserves public and transparent management. While only 5 per cent of water delivery systems are privatized today, we must remain vigilant because the temptation keeps surfacing more and more often in the media.

United Nations Secretary General Kofi Annan said:

Access to safe water is a fundamental human need and, therefore, a basic human right. Contaminated water jeopardizes both the physical and social health of all people. It is an affront to human dignity.

Therefore, let us support Development and Peace, whose slogan this year is "Water: life before profit."

THE HONOURABLE PIERRE CLAUDE NOLIN

RECIPIENT OF RICHARD J. DENNIS DRUGPEACE
AWARD FOR OUTSTANDING ACHIEVEMENT
IN THE FIELD OF DRUG POLICY

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I am pleased to advise you that tomorrow, in Meadowlands, New Jersey, our honourable colleague, Senator Pierre Claude Nolin, will be honoured by the Drug Policy Alliance.

[English]

Senator Nolin will be honoured along with Vancouver Mayor Larry Campbell and his predecessor Philip Owen, according to the citation, because they:

...have worked courageously to promote and implement more sensible drug policies in Canada...

I also want to quote from the citations that are applicable to the three honourees:

Canada is now the clear leader in North America on issues ranging from medical marijuana to preventing HIV/AIDS among injection drug users. Canadians suffering from AIDS, cancer, and other serious illnesses have had legal access to medical marijuana since 1999, and this summer the Canadian government began providing medical marijuana to those with a doctor's recommendation. In September, North America's first government-sponsored safe consumption site for users of heroin and other drugs opened in Vancouver. Canada's Parliament is now considering decriminalizing marijuana, and heroin prescription trials are expected to start shortly in Toronto, Montreal and Vancouver.

Senator Nolin joins a distinguished group of past recipients that includes former U.S. Surgeon General Jocelyn Elders; former Prosecutor General of Bogota, Gustavo de Greiff; and Gary Johnson, former Governor of New Mexico.

[Translation]

Congratulations, dear colleague, for this much-deserved recognition.

[English]

UNITED KINGDOM

LEGISLATIVE BODY TO PROMOTE HUMAN RIGHTS

Hon. Donald H. Oliver: Honourable senators, Canada's High Commissioner to the United Kingdom is Mr. Mel Cappe, who used to be the Clerk of the Privy Council here in Ottawa. He recently sent me some information about a unique event taking place in the United Kingdom. Under plans announced on October 30, the work of the existing equality commissions — the Commission for Racial Equality, the Equal Opportunities Commission and the Disability Rights Commission — will come together to give greater support and joined-up advice on discrimination and promote equality and diversity.

This is a new legislative body to provide support for the promotion of human rights. Part of its responsibility will be to propose new laws to outlaw workplace discrimination based on age, religion or belief, and sexual orientation. Provisionally called the Commission for Equality and Human Rights, the new commission is the result of the biggest review of British equality institutions in a quarter-century. The new commission is intended to promote equality and diversity. It would also foster an understanding of the important role seniors, homosexuals, visible minorities, women and people with disabilities play in creating a prosperous and cohesive society.

• (1340)

Patricia Hewitt is the trade and industry secretary in the U.K. She is also the minister for women. In a statement, Ms. Hewitt said:

We are committed to providing opportunity for all and equality matters to everyone — it is not a minority concern. A successful society must make full use of the talents of all its members... tackling discrimination in the 21st Century requires a joined-up approach that puts equality in the mainstream of concern... As individuals, our identities are diverse, complex and multi-layered. People don't see themselves as solely a woman, or black, or gay and neither should our equality organizations... By bringing these bodies into one organisation we will make life much easier for individuals to get help and advice, especially when they are discriminated against on more than one level.

Honourable senators, as Lord Falconer states, "Human rights and equality are two sides of a single coin — respect for the

dignity and the value of each person." The actions taken by the British government should serve as an example to others, including Canada. By following a similar mandate, other governments can take solid steps toward ensuring that visible minorities are treated equally in Canada as citizens.

NATIONAL DRUG STRATEGY

CANNABIS USE—MARIJUANA BILL

Hon. Gerry St. Germain: Honourable senators, this statement can be considered a dissenting view.

Soon the other place will be sending us a bill that will make amendments to the Criminal Code for cannabis possession and grow operations. The National Drug Strategy announced in conjunction with the decriminalization bill reveals the shameful failure of the Liberal government to fulfil its promises to the Canadian people. Funding allocated to this National Drug Strategy is merely half of what was promised.

As a former police officer, I firmly agree with the serious concerns raised by the Canadian Professional Police Association, the Canadian Medical Association, and the group of Mothers Against Drunk Driving. In a letter to the Prime Minister dated October 21, 2003, the Canadian Professional Police Association stated the following:

Canada needs and deserves a national drug strategy. A national drug strategy that invests in research, prevention, treatment, enforcement and innovative programs...a truly Canadian drug strategy that is integrated, resourced, and sustainable.

This goal of ensuring public health and safety cannot be realized if the government continues to provide 50-cent dollars.

Honourable senators, cannabis use is not only a criminal justice issue, it is also a health issue. According to a study conducted by the Canadian Medical Association, cannabis slows reaction times, impairs motor coordination and is also associated with impairment of attention, memory and other mental processes.

While the jury is still out on the value of medical marijuana, it is clear that all other uses are destructive. It is a contradiction for the government to aggressively advocate against smoking tobacco while at the same time aggressively pursuing legal measures that will clearly lead to normalizing the use of another harmful substance, one that has mind-altering and carcinogenic effects.

Just last week, the national news reported that while teenaged tobacco smoking has decreased, the number of Canadian youth smoking marijuana has more than doubled. The government has clearly sent the message to Canadian teenagers that smoking tobacco is bad, but smoking marijuana is literally okay, that drug use in moderation is okay.

[Senator Lynch-Staunton]

Smoking anything is simply destructive to one's health. The moment we accept the use of mind-altering drugs as a common practice, we move closer and closer toward moral decay in our society. Public health and public safety must be our highest priority on this matter.

Honourable senators, we cannot continue to ignore the implications of our actions on our neighbours. The government must acknowledge that good bilateral negotiations are built on mutual trust and respect, and Canada must recognize that working with our bordering neighbours is in our mutual interest.

OSTEOPOROSIS MONTH

Hon. Yves Morin: Honourable senators, November is Osteoporosis Month, a time to remember that early detection and treatment may prevent fractures and help Canadians maintain an independent and active lifestyle as they age. Each year, almost 30,000 Canadians fracture a hip, 70 per cent of them because of osteoporosis.

[Translation]

One-quarter of these patients do not survive these fractures; and one-quarter cannot return to their homes. This condition not only greatly affects patient autonomy, but also creates very stressful situations in the families of hip fracture victims.

[English]

Osteoporosis is called the "silent thief" because of what it steals from its sufferers. It can steal their appearance, their ability to work, their connections with family and friends and, in some cases, their lives.

The Osteoporosis Society of Canada ensures that the latest prevention, diagnosis and treatment options are available to all Canadians. The society offers a wide variety of resources and educational programs to the public and supports osteoporosis research.

[Translation]

Recently, Dr. Jacques Brown and his colleagues at Laval University in Quebec City published new clinical practice guidelines for the diagnosis and treatment of osteoporosis in Canada. These guidelines follow an extensive review of the scientific literature on the subject and will be a valuable aid to all health professionals involved in the clinical field of osteoporosis.

[English]

The Canadian Institutes of Health Research's Institute of Musculoskeletal Health and Arthritis, led by Dr. Cy Frank, is working with partners such as the Osteoporosis Society to eradicate the pain of osteoporosis and assist Canadians to live healthy lives. Dr. Christopher Kovacs from Memorial University in St. John's is exploring why women who breastfeed are able to

regain the calcium they lose within weeks of weaning, returning their skeletons to pre-pregnancy bone densities. Learning how and why this happens could provide clues about how to rebuild bone density in others — the ultimate and elusive goal for treating osteoporosis.

Honourable senators, we can all reduce the toll of osteoporosis by supporting the remarkable work of the Osteoporosis Society of Canada and by making sure that all Canadians are made aware of the risk factors of this common condition.

BHUPINDER LIDDAR

CONGRATULATIONS ON APPOINTMENT AS CONSUL GENERAL

Hon. J. Michael Forrestall: Honourable senators, I rise briefly to join, for anyone who was in the Reading Room of Parliament the night before last, what could only be described as wall-to-wall numbers of people who turned out to send their congratulations to a still relatively young man who has just been named head of a Canadian mission in India.

I speak of Bhupinder Liddar, who became a very good friend through the 1960s to the 1970s and 1980s. A gentleman from Prince Edward Island and I, a long-time member of Parliament, a member of the class of '57 named Heath Macquarrie, in the old days literally shared offices and secretaries, so we were very close. Mr. Liddar did research work for both of us. We got to know him well. We got to know his enthusiasm. As a matter of fact, it was that very enthusiasm that brings me to my feet today to say to the Government of Canada, "At long last, you have righted an old wrong."

I welcome Bhupinder Liddar's appointment. His qualifications are known to virtually all of us in this chamber. He is well educated in social sciences and international relations. He is a columnist, broadcaster, program host and researcher. Above all, he was perhaps the most knowledgeable young person I ever met on matters in the Middle East. His travel experience includes the world. His friends and acquaintances are those he has met and those who knew him by his mark, his reputation.

• (1350)

I wish Mr. Liddar well, and I do so before the flood of appointments — all of which, I am sure, will be very good — that is bound to come out of the office on the other side of the building in the next few days.

The Hon. the Speaker: Senator Forrestall, I regret to advise that the 15-minute time period for Senators' Statements has expired.

[Translation]

ROUTINE PROCEEDINGS

OFFICIAL LANGUAGES

GOVERNMENT RESPONSE TO COMMITTEE TABLED

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, pursuant to rule 131(2), I have the honour to table, in both official languages, a document entitled "The Government Response to the Third Report of the Standing Senate Committee on Official Languages on: Environmental Scan: Access to Justice in Both Official Languages."

INTERNATIONAL LABOUR CONFERENCE

DOCUMENT TABLED

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have the honour to table a document entitled "Canadian Position with Respect to Recommendation 193, a Protocol to Convention 155 and Recommendation 194" adopted at the 90th session of the International Labour Conference in Geneva, Switzerland in June 2002.

[English]

STUDY ON IMPACT OF CLIMATE CHANGE

REPORT OF AGRICULTURE AND FORESTRY COMMITTEE TABLED

Hon. Donald H. Oliver: Honourable senators, I have the honour to table the sixth report of the Standing Senate Committee on Agriculture and Forestry, which deals with the impact of climate change on Canada's agriculture, forests and rural communities and the potential adaptation options focusing on primary production, practices, technologies, ecosystems and other related areas.

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

On motion of Senator Oliver, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

STUDY ON FIREARMS ACT

REPORT OF LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE TABLED

Hon. George J. Furey: Honourable senators, I have the honour to table the ninth report of the Standing Senate Committee on Legal and Constitutional Affairs, which deals with regulations made pursuant to an act respecting firearms and other weapons, Statutes of Canada, 1995, chapter 39, as contemplated by section 118(3) of that act.

INCOME TAX ACT

BILL TO AMEND—REPORT OF COMMITTEE

Hon. Richard H. Kroft, Chairman of the Standing Senate Committee on Banking, Trade and Commerce, presented the following report:

Thursday, November 6, 2003

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

SIXTEENTH REPORT

Your Committee, to which was referred Bill C-48, *An Act to amend the Income Tax Act (natural resources)*, has, in obedience to the Order of Reference of Monday, October 27, 2003, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

RICHARD H. KROFT
Chairman

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator Kroft, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

[Translation]

SCRUTINY OF REGULATIONS

FOURTH REPORT OF JOINT COMMITTEE TABLED

Hon. Céline Hervieux-Payette: Honourable senators, I have the honour to table the fourth report of the Standing Joint Committee for the Scrutiny of Regulations concerning user fees in national parks.

[English]

STUDY ON TRADE RELATIONSHIPS WITH UNITED STATES AND MEXICO

INTERIM REPORT OF FOREIGN AFFAIRS COMMITTEE TABLED

Hon. Peter A. Stollery: Honourable senators, I have the honour to table the sixth report of the Standing Senate Committee on Foreign Affairs, an interim report entitled: "The Rising Dollar: Explanation and Economic Impacts," Volume 2.

The Hon. the Speaker: Honourable senators, when shall this report be taken into consideration?

On motion of Senator Stollery, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[Translation]

FISHERIES AND OCEANS

REPORT OF COMMITTEE ON QUESTION OF PRIVILEGE RAISED ON MAY 27, 2003 PRESENTED

Hon. Gerald J. Comeau, Chair of the Standing Senate Committee on Fisheries and Oceans, presented the following report:

Thursday, November 6, 2003

The Standing Senate Committee on Fisheries and Oceans has the honour to present its

SEVENTH REPORT

Pursuant to Appendix IV of the *Rules of the Senate*, your committee hereby reports on the question of privilege raised by the Honourable Senator Comeau on Tuesday, May 27, 2003.

On Thursday, May 15, 2003, the Canadian Press ran a story dealing with artificial reefs, one topic addressed in a confidential document that your committee had considered in camera two days earlier. On Friday, May 16, several newspapers picked up this story.

On Tuesday, May 27, 2003, the first day on which the Senate sat following the initial publication of this story, the Chair of your committee, pursuant to rule 43, gave written notice of, and subsequently raised in the Senate, a question of privilege relating to this matter. The Speaker ruled that there was a *prima facie* question of privilege and, pursuant to Appendix IV of the *Rules of the Senate*, your committee was charged with examining the matter and reporting thereon to the Senate.

Your committee subsequently reviewed the matter and has concluded that the premature release of material did not affect the content of its Fifth Report, which was tabled in the Senate on Monday, June 16, 2003. The material to which the media made reference dealt with a subject that had been dropped from the report prior to the disclosure. Where this premature release could, however, have had negative effects was on the collaborative working relationship between members of the committee. This working relationship is extremely close, having been built up over many years. An incident such as this leak has the potential to decrease this strong sense of trust and teamwork.

Your committee has also concluded that the rigor of a formal investigation could have significant detrimental effects on the excellent relationships between members of your committee, their employees, and the staff of your committee, and would therefore have a negative impact on the committee's effectiveness. Actions such as hiring an external investigator could compromise even further the cohesion of the committee. Your committee is also far from confident that a more in-depth formal investigation would actually succeed in identifying the source of the leak.

Your committee's general conclusion is that the leak, while highly regrettable, was accidental. It probably arose from a failure to appreciate fully the importance of respecting the confidentiality of matters dealt with in camera and related documents.

Your committee takes this opportunity to emphasize, to all senators, Senate staff, and others involved in dealing with confidential documents, the importance of dealing with these in the most cautious manner. It is, in dealing with these materials, always better to err on the side of caution in order to avoid the inadvertent release of information that the Senate is entitled to receive first.

In light of the above, your committee recommends that no further action be taken in relation to this particular leak.

Respectfully submitted,

GERALD J. COMEAU
Chair

The Hon. the Speaker: When shall this report be taken into consideration?

On motion of Senator Comeau, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

STUDY ON MATTERS RELATING TO STRADDLING STOCKS AND TO FISH HABITAT

INTERIM REPORT OF FISHERIES AND OCEANS COMMITTEE TABLED

Hon. Gerald J. Comeau: Honourable senators, I have the honour to table the eighth report of the Standing Senate Committee on Fisheries and Oceans, an interim report entitled "Fish Habitat."

I move that the report be placed on the Orders of the Day for consideration at the next sitting of the Senate.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

On motion of Senator Comeau, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

ADJOURNMENT

NOTICE OF MOTION

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I give notice that at the next sitting of the Senate I will move:

That when the Senate adjourns on Monday, November 10, 2003, it do stand adjourned until Wednesday, November 12, 2003, at 1:30 p.m.

[English]

CANADIAN INTER-PARLIAMENTARY GROUP

ONE-HUNDRED AND EIGHTH CONFERENCE OF
INTER-PARLIAMENTARY UNION, APRIL 3-12,
2003—REPORT TABLED

Hon. Donald H. Oliver: Honourable senators, I have the honour to table the report of the Canadian Inter-Parliamentary Group, respecting its participation at the one-hundred and eighth conference and related meetings of the Inter-Parliamentary Union, held in Santiago, Chile from April 3 to April 12, 2003.

• (1400)

[Translation]

OFFICIAL LANGUAGES

BILINGUAL STATUS OF OTTAWA—
PRESENTATION OF PETITION

Hon. Jean-Robert Gauthier: Honourable senators, pursuant to rule 4(h), I have the honour to table in this chamber, the petitions signed by 1,000 other people, for a total of 17,000 people who are asking that Ottawa, the capital of Canada, be declared a bilingual city reflecting the country's linguistic duality.

The petitioners are calling on Parliament to consider the following points:

That the Canadian Constitution provides that English and French are the two official languages of our country and have equality of status and equal rights and privileges as to their use in all institutions of the Government of Canada;

That section 16 of the *Constitution Act, 1867* designates the city of Ottawa as the seat of government of Canada;

[English]

That citizens have the right in the national capital to have access to the services provided by all institutions of the Government of Canada in the official language of their choice, namely English or French;

That Ottawa, the capital of Canada, has a duty to reflect the linguistic duality at the heart of our collective identity and characteristic of the very nature of our country.

Therefore, your petitioners ask Parliament to confirm in the Constitution of Canada that Ottawa, the capital of Canada, is officially bilingual, pursuant to section 16 of the Constitution Act, from 1867 to 1982.

QUESTION PERIOD

HERITAGE

SIR JOHN A. MACDONALD DAY
AND SIR WILFRID LAURIER DAY—
DELAY IN EXECUTING PARLIAMENT'S WISHES

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, the minister will recall, as all of us will, that on March 21 of last year, 2002, Royal Assent was given to Bill S-14, an act respecting Sir John A. Macdonald Day and Sir Wilfrid Laurier Day. By the way, it was a bill that was initiated in this place. Parliament's intention, through this legislation, is to give national prominence to these remarkable Prime Ministers on their respective birthdays — January 11 and November 20.

I would ask the minister whether she can explain why, over one-and-a-half years later, Canadian Heritage — as far as I and my co-sponsor of the bill in the House have been able to find out — has yet to commit itself to executing Parliament's wishes, particularly in light of the fact that Sir Wilfrid Laurier Day is only 14 days away?

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for his question, and I assure him that I will take that matter up with the minister and her department as soon as I have a moment away from this chamber.

Senator Lynch-Staunton: We can certainly suspend for the time needed as far as I am concerned. However, there is more. I saw in *Quorum* today a report from *The Province* to the effect that the Prime Minister was engaged in a photo opportunity to mark Hockey Week in Canada. That is fine, but surely the same prominence can be given to reminding Canadians of the tremendous contributions made by two great Prime Ministers, Macdonald and Laurier. Last year nothing was done. They could plead that they did not have enough time or that there was no money in their budgets. Canadian Heritage and other departments inundate us for weeks and days with press releases and glossy books, and yet two extraordinary Canadians, Canadian Prime Ministers, are being totally ignored.

This is not a week that was just plucked out of the air; this was consented to after a debate in both Houses and was the subject of a bill which was given Royal Assent. Yet as far as I can see — and I hope the minister can come back soon and deny it — Canadian Heritage is totally ignoring the wishes of Parliament.

Senator Carstairs: I thank the honourable senator for his question. As a former history teacher, I can assure him it concerns me as much as it concerns him. I must say I am shocked, given the enormous respect that our present Prime Minister has for Sir Wilfrid Laurier, that there has not been a plan put into place. Like Senator Lynch-Staunton, I am concerned about this and I also think we should pay the same type of tribute to Sir John A. Macdonald, the founding Father of Confederation, as we do to Sir Wilfrid Laurier. I will look into the matter immediately.

FOREIGN AFFAIRS

UNITED STATES—CANADIAN CITIZEN DEPORTED TO SYRIA—INFORMATION PROVIDED BY CANADIAN OFFICIALS

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, my question is to the minister and has to do with respect to Mr. Arar. Yesterday, the Prime Minister said that he had asked the United States to hand over the names of Canadian officials who may have provided information to the U.S. intelligence community.

Can the Leader of the Government in the Senate tell us when the government expects to receive this information from the United States? When it does, will it be shared with both Houses of Parliament?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the request has been made directly, I understand, from the Minister of Foreign Affairs to the appropriate official, Colin Powell, in the United States. I do not know if anything has yet been received from the United States or when we would expect to receive something from them.

UNITED STATES—CANADIAN CITIZEN DEPORTED TO SYRIA—MEETING WITH CONSULAR OFFICIAL

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, Mr. Arar, in his meeting with the press the other day, said that when he was in New York prior to his being whisked away to Jordan, he had been visited by officials of the Canadian Consulate in New York. As I listened carefully to what Mr. Arar said, he used the feminine pronoun "she" in reference to the Canadian consular official.

My question is: Was Pamela Wallin, the consul in New York for Canada, the person who met with Mr. Arar?

Hon. Sharon Carstairs (Leader of the Government): I do not know, senator.

UNITED STATES—CANADIAN CITIZEN DEPORTED TO SYRIA—PROVISION OF APARTMENT LEASE AGREEMENT

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Can the government tell us, if these inquiries are being made of Secretary Powell or other officials in the United States, would it

also include how a copy of Mr. Arar's apartment rental lease came to be in the possession of the FBI and the U. S. immigration officials, given the fact that both Mr. Arar and the Minto Development Company here have said that they did not release the document to anyone?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, that is clearly as much of an important question as who were the officials from Canada, if any, who may have provided information. This seems, I think, to be one of those critical pieces of information about which the question is being asked.

UNITED STATES—CANADIAN CITIZEN DEPORTED TO SYRIA—REQUEST FOR INQUIRY

Hon. Marcel Prud'homme: Honourable senators, some of us have raised this issue before. It started on October 22, 2002, which is not very recently. I have all the names of people who participated on this issue, which is my way of working. I am sure that Mr. Harper may not be too happy about what he said on Monday, November 18, 2002. He may have to live with that, but that is what happens sometimes when you get carried away.

En passant, happy birthday to Senator Fairbairn and my colleague Senator St. Germain.

It seems evident, Madam Leader, that Canadians will not let this matter go. That is evident when you see *The Globe and Mail* and all the newspapers in Canada saying that only an inquiry which is public and independent will help us get to the truth, as painful as the truth may be.

I ask the minister again to please convey my request. I do not want to bother you or be aggressive to anyone in particular. I beg of you, in the name of Canadian sanity, otherwise it will drag on and on.

People think that this case will disappear because soon we will be gone from here. I can tell you that it will not disappear. People want to know. There is nothing like having the truth come out. Sometimes it is better to cut your losses right at the beginning rather than having to face the consequences. A case such as this is disagreeable and bad for us in Canada.

I have the greatest respect for the Prime Minister of Canada, and it is too bad we cannot attend the tributes to Mr. Chrétien this afternoon at 3 p.m. in the House of Commons. I wish I could be there, but I must be here.

Madam Minister, I put to you this question: Would you kindly convey again to your colleagues in cabinet that perhaps it is time to cut their losses and to agree to an inquiry?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I will certainly inform my colleagues of your interest in this matter, senator.

TREASURY BOARD

PUBLIC ACCOUNTS—PREMIUM RATES FOR
EMPLOYMENT INSURANCE—FUND SURPLUS

Hon. Donald H. Oliver: Honourable senators, my question is for the Leader of the Government in the Senate. It deals with the Public Accounts and Employment Insurance. My question arises from comments that the Auditor General wrote in the Public Accounts that were tabled in the Senate last Tuesday.

• (1410)

In her observations to the Public Accounts, Sheila Fraser wrote:

The Government has still not addressed the long-standing issues related both to setting premium rates for Employment Insurance and to the appropriate size of the surplus in the Employment Insurance Account.

In 2002-03, Employment Insurance (EI) surplus grew by \$3.3 billion to \$43.8 billion. This is about three times higher than the Chief Actuary of Human Resources Development Canada said was necessary in his 2001 report on Employment Insurance premium rates.

Honourable senators, two full years have now passed since the Chief Actuary's 2001 report. For what reason other than "we need the money," is the government continuing to run an annual surplus of several billion dollars in the EI account?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as the honourable senator knows full well, Budget 2003 set the premium rate for 2004 at \$1.98 and at the same time launched a consultation with Canadians on a new EI rate-setting regime for 2005 and beyond.

Senator Oliver: Honourable senators, last year, the EI surplus was \$3.3 billion and the overall government surplus was \$7 billion. As of last year, the cumulative EI surplus was \$44 billion. The amount of debt repaid was \$52 billion.

Will the government leader confirm the basic math that shows that overcharging Canadian workers and those who employ them for employment insurance equals almost half of last year's surplus and 85 per cent of the total debt reduction to date?

Senator Carstairs: The honourable senator knows full well that the rate-setting of EI premiums has consistently been reduced over the last five years and hopefully with the report for 2005 will continue to be so.

FOREIGN AFFAIRS

UNITED NATIONS—VOTE TO SUPPORT NEW AGENDA
RESOLUTION ON NUCLEAR DISARMAMENT

Hon. Douglas Roche: Honourable senators, my question is directed to the Leader of the Government in the Senate. The minister will recall that I asked her last week to carry forward to the government my request, and that of many Canadians, that Canada vote "yes" on the important New Agenda Resolution at the UN First Committee dealing with the 13 practical steps for nuclear disarmament.

I am glad to say that two days ago Canada did vote "yes," the only NATO country to do so, thus confirming Canada's place as a leader in the nuclear disarmament agenda. I wish to express my thanks to the government and the leader for her role in this achievement.

Will the government, at the departmental level, now examine the implications of Canada's step forward in being the only NATO country to vote for the New Agenda Resolution two years in a row and consider how, with the help of organizations such as the Middle Powers Initiative, Canada might be able to build a bridge between NATO and the new agenda countries in an effort to strengthen the Non-Proliferation Treaty Review Conference of 2005?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the honourable senator opposite should not sell himself short. Clearly, he brought the matter to the attention of this chamber, and I brought it forward from there. I know that others were obviously considering the matter.

In terms of the question and advice the honourable senator has raised this afternoon, let me assure him that I will go forward in the same way as I did with the other.

REPORT ON CANADIAN ROLE
IN BALLISTIC MISSILE DEFENCE SYSTEM

Hon. Douglas Roche: Honourable senators, the report of the recent Lu Institute Conference on a possible Canadian role in the U.S. ballistic missile development program is now ready. This is the report to which I referred some time ago. It provides solid reasons for Canada not to join this program. The Minister said previously that she would hand deliver this report to the Prime Minister. Will she give this matter the same priority and attention that she gave the New Agenda Resolution?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I can assure the honourable senator that I take forward the collective views of the members of the Senate individually as they make them known to me and collectively as we do in motions and votes of this chamber.

Of course, I would be more than pleased to put this evidence and study before the Government of Canada and the Prime Minister.

HEALTH

REQUEST TO BAN USE OF TRANS FATS IN FOOD
AND IMPLEMENT MANDATORY LABELLING

Hon. Mira Spivak: Honourable senators, trans fatty acids, the hidden fat in snack foods, processed foods and fast foods, have absolutely no nutritional value and can contribute to soaring rates of obesity, diabetes, heart disease and maybe even Alzheimer's disease.

Minister Anne McLellan has stated that while she will introduce mandatory nutritional labelling for foods containing transfatty acids, she will not ban the use of them.

A blue ribbon panel of U.S. scientists has found there is no safe level of trans fat, and even 1 gram, the amount in one frozen waffle, can increase the risk of heart disease by 20 per cent.

Trans fat is much worse than saturated fat because, while saturated fat raises the level of bad cholesterol, trans fat not only raises low-density lipoproteins but also prevents good cholesterol, high-level lipoproteins, from doing its job of clearing the circulatory system, and they are particularly dangerous for children.

Since they are so dangerous for children, can the Minister of Health be persuaded to ban the use of trans fats as Denmark has done, a more powerful policy than simply labelling?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as the honourable senator herself has pointed out, the decision to date has been that we will provide better nutritional data for trans fatty acids. In terms of whether an outright ban will be considered, while there are many in the scientific community who think this may be a good idea, I am afraid there are all too many Canadians who still want to eat their trans fatty acids. Before we reach the level of deciding to ban such things, we need to conduct a major education program in this country on how to eat healthier foods.

Senator Spivak: Of course there are always alternatives, but it is alarming that most popular children's snacks, such as Goldfish, microwave popcorn, pizza and fruit roll-ups, contain high amounts of trans fat.

Mandatory labelling will not come into effect until 2006 for large companies. Most packaged meat will be exempt, as well as foods for children under the age of two, including baby formula and Arrowroot cookies, all of which contain trans fat. Also, menus in restaurants will not have to disclose nutritional information.

Since doctors agree that the recommended level of trans fat in the diet is zero, could the Leader of the Government ask the Minister of Health to explain why Health Canada is taking such a timid and dangerous laissez-faire approach, especially since we have banned caffeine from Mountain Dew, which young hockey players love to drink, although Americans allow it and Pepsi Cola has pressured us to do so as well?

There is a precedent.

Senator Carstairs: I think the honourable senator would agree that it is somewhat easier to ban caffeine in one drink than it is to ban the entire spectrum of trans fatty acids. I would repeat my earlier reply: I think we have to do a better job of educating Canadians about how both their digestive systems and their overall health are impacted by the food that they eat. I must tell the honourable senator that what distresses me as a former educator is the fact that there are very few healthy eating programs anywhere in the schools of this nation.

• (1420)

Senator Spivak: Honourable senators, I have a last comment but not a question.

We have forced the reduction of tropical oils. Since consumers are so bombarded with products containing these oils, especially kids — and kids do not read labels and they will eat what they want to eat — it seems to me that a safer approach is to ban them entirely. That is my opinion.

FOREIGN AFFAIRS

SRI LANKA—PEACE TALKS—
REASSESSMENT OF GOVERNMENT AID

Hon. A. Raynell Andreychuk: Honourable senators, I want to return to the issue of Sri Lanka. Since I raised the question yesterday, the government has moved to impose a state of emergency on that country. This will be devastating to the economy that was just beginning to be trusted for trade, investment and tourism, which are the staples of success in that country. This decision will obviously throw the peace process into extreme turmoil.

I ask the Leader of the Government in the Senate: First, what is Canada doing to assess the situation? Are we taking steps to approach both parties to the peace process to ensure that neither will take advantage of civilians at this critical time? Second, will the Canadian government reassess its program of aid not to the people of Sri Lanka but to their government? We were involved in some of the organizational support systems to this government, as it appeared to be on the road to recovery and to peace and justice. Due to the actions of its president, which to this point appear to be totally unwarranted, this country is being thrown into absolute crisis.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I am sure that the honourable senator understands that the Department of Foreign Affairs is looking at this situation in a new way because of the events that have unfolded in that country.

I do not think that at this moment any decisions have been made, but I can assure the honourable senator that, for obvious reasons, this matter is higher on the radar screen than it was just a few short weeks ago.

Senator Andreychuk: Honourable senators, the briefings that I received from our High Commissioner in Sri Lanka lead me to believe that the personnel we have on the ground there are extremely competent and understand the issues. It would seem to me that this would be the point for the Canadian government to take action, not only through our High Commissioner in Sri Lanka, but also by calling in the High Commissioner here, who is an extremely professional woman, to see what we can do to alert her that this is a disaster in the making. I think we should use the people we have on the ground, both here and there, to impress upon them the point that we are not taking sides, but that the way that they are approaching their internal personality differentials and the way that they are resolving opposition difficulties is putting civilians at risk — the very same people who have been the subject of the turmoil of this country for so many decades. It will be the civilians on the ground, who were just reclaiming their position and were just being able to start small businesses, who will suffer most. Hundreds of people in villages had optimism. Now, it is being totally destroyed and the country has reverted to chaos.

I would hope that we would utilize the staff at the High Commission to impress upon all of the good contacts that we have there at every level that this must be stopped. They must go back to the bargaining table, the negotiating table, on their own political issues, as well as on the peace process.

Senator Carstairs: I thank the honourable senator for her suggestions. She can rest assured that they will be brought forward.

SOLICITOR GENERAL

RCMP—BREACH OF HILL SECURITY

Hon. J. Michael Forrestall: Honourable senators, I have a question arising out of the incident yesterday in front of the Parliament Buildings involving a motorist who wanted a good parking space. Can the Leader of the Government in the Senate fill us in on the status of the police investigation to date, and can she shed any light at all on how the woman got past the RCMP and on to the Hill? Had she had any malicious intent and had it been carried out, many of us might not be around today.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, for those individuals in the chamber who may not know what occurred yesterday, let me give a brief summary.

Apparently, a female driver in a truck attempted to come into —

Senator Forrestall: It was a car.

Senator Carstairs: Senator Forrestall tells me it was a car. I was told it was a truck.

Senator Forrestall: We watched it from our office window.

Senator Carstairs: This woman attempted to enter by the Metcalfe entrance, which is used exclusively by senators and members of Parliament.

The RCMP apparently signalled for her to stop. She did not. She kept on going. Whether her intention was to find a good parking spot I have no idea, but she did go through. She was quickly detained and arrested. The RCMP is now in charge of the case and is investigating further.

Senator Forrestall: I thank the minister for that brief update.

NATIONAL DEFENCE

SAFETY OF SEA KING HELICOPTERS— USE OF SEA KING BY U.S. PRESIDENT— USED EQUIPMENT

Hon. J. Michael Forrestall: Honourable senators, the government has tried by a variety of methods to rid this nation of Sea King helicopters. I notice that you are now burning them. My question, however, is not about that; it is, about security or safety, which is the tenor of my earlier question. The Prime Minister has made fun of this in the other place. The Leader of the Government in the Senate made reference to it on a number of occasions. If the Sea Kings are so unsafe, why does the President of the United States use one? While we are now going through the investigation of the undercarriage and all the other “new” parts to the aged Sea Kings, could the minister file in this chamber a written report to show that the presidential Sea King fleet in the United States is not made up of refurbished materials — that is to say, used military engines and used machine spare parts, which is the case with Canada’s Sea Kings? Would the minister acknowledge that there is nothing on the President’s Sea King helicopter that is not brand new?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, the honourable senator first began with a discussion of burning the Sea Kings. When I first saw the incident, I thought the honourable senator had become so desperate to get new ones that perhaps he had had something to do with it. I am being totally facetious in this respect, obviously.

What happened, honourable senators, was that a Sea King helicopter caught fire in a hangar during routine maintenance work. Apparently, the incident was minor. Obviously, that particular aircraft will have to be repaired in all the necessary aspects before it can be airborne again.

As to the Sea Kings that are used by the President of the United States, I cannot possibly gather the information that has been requested because those vehicles are within the military purview of the United States. With regard to whether any used parts have ever been used, I can say with some confidence that, even in the United States, fully operational used parts are undoubtedly used.

Senator Forrestall: Is used equipment installed in the Sea King used by the President of the United States?

[Translation]

• (1430)

TREASURY BOARD

USE OF EMPLOYMENT INSURANCE FUND SURPLUS
TO REDUCE NATIONAL DEBT

Hon. Jean-Claude Rivest: Honourable senators, in answer to questions from Senator Oliver about the employment insurance program, the minister indicated that the government did not intend to change its approach. Senator Oliver stressed how unjust this is for workers, given their contributions and the benefits they receive in return, which are often not commensurate with the premiums paid by workers and employers.

Is the Leader of the Government in the Senate aware that the government is very vocal about how it managed to reduce Canada's public debt by more than \$50 billion over the last five or six years? Is the minister aware that, of the \$50 billion paid down on Canada's debt, \$40 billion came from the contributions of workers and employers to the employment insurance fund? Does the minister believe it is fair to make Canadians, who are contributing to an employment insurance system created for the benefit of all Canadians, pay down the national debt? Is it fair to ask a particular category of Canadians to bear the costs of the public debt for the entire country?

[English]

Hon. Sharon Carstairs (Leader of the Government): With the greatest of respect to the honourable senator, he should realize that it is not just workers who pay into the EI fund. Employers also pay into the EI fund. The contribution of employers is 1.4 times the contribution of workers. By the time we include all workers and all employers, practically all Canadians are included, except children.

The reality here is that, yes, there has been a surplus in the EI fund. I think that is preferable to not having adequate monies in the EI fund. In addition, there has been an extension of benefits. One of which I am extremely proud is the compassionate caregiver program that will go into force on January 1, 2004.

The Hon. the Speaker: Senator Rivest, I am sorry, but the 30 minutes for Question Period has expired.

[Translation]

DELAYED ANSWER TO ORAL QUESTION

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I have to honour to table a delayed answer to an oral question raised in the Senate on October 27, 2003 by Senator LeBreton regarding the investigation into payments made to KAGF Consulting.

HEALTH

INVESTIGATION INTO PAYMENTS
TO KAGF CONSULTING

(Response to question raised by Hon. Marjory LeBreton on October 27, 2003)

In 1995 Health Canada launched an internal audit of the Sagkeeng Solvent Treatment Centre (the predecessor organization to Virginia Fontaine Addictions Foundation Inc.), which later evolved into the 1997 investigation report.

Health Canada took action as a result of the 1997 investigation, including the development of a management action plan to follow-up on the report's recommendations.

In October 2000, following allegations of the misuse of public funds at the Virginia Fontaine Addictions Foundation, Health Canada immediately launched a forensic audit; contacted the RCMP; launched civil litigation to get back any funds that had been misused and initiated other key audits and reviews, including a review of previous actions taken on the file (completed May 2001).

Health Canada has cooperated fully with the RCMP and will continue to do so.

[English]

ORDERS OF THE DAY

CRIMINAL CODE

BILL TO AMEND—MESSAGE FROM COMMONS—
MOTION TO REFER TO LEGAL AND CONSTITUTIONAL
AFFAIRS COMMITTEE ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C.:

That, with respect to the House of Commons Message to the Senate dated September 29, 2003 regarding Bill C-10B:

(i) the Senate do not insist on its amendment numbered 2;

(ii) the Senate do not insist on its modified version of amendment numbered 3 to which the House of Commons disagreed;

(iii) the Senate do not insist on its modified version of amendment numbered 4, but it do concur in the amendment made by the House of Commons to amendment numbered 4; and

That a Message be sent to the House of Commons to acquaint that House accordingly,

And on the motion of the Honourable Senator Watt, seconded by the Honourable Senator Adams, that the motion, together with the message from the House of Commons dated September 29, 2003, regarding Bill C-10B, An Act to amend the Criminal Code (cruelty to animals), be referred to the Standing Senate Committee on Legal and Constitutional Affairs for consideration and report.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, we have before us in this chamber this afternoon a motion to move Bill C-10B to the Standing Senate Committee on Legal and Constitutional Affairs. If we were to pass this motion, it would be the third time that this bill has gone before this committee. I allowed it to go the last time with some reluctance, but at least on the basis of the fact that the information sent from the House of Commons was somewhat different from the information that we had dealt with in our debates and discussions.

This is no longer the case. The message that has come back from the House of Commons is identical to the message we had earlier received. As a result, I see no particular value in sending this bill back to committee.

It is important for us, honourable senators, to realize that while we may not be proroguing this week or next week, or perhaps not even the week after that, prorogation will take place. If we send this bill back to committee, there is every chance that it will die on the Order Paper.

The Hon. the Speaker: Is the house ready for the question?

Some Hon. Senators: Question!

The Hon. the Speaker: The first matter to be dealt with is the amendment. I will put the question on the amendment.

It was moved by the Honourable Senator Watt, seconded by the Honourable Senator Adams, that the motion, together with the message from the House of Commons dated September 29, 2003 regarding Bill C-10B, to amend the criminal code (cruelty to animals) be referred to the Standing Senate Committee on Legal and Constitutional Affairs for consideration and report.

Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Those in favour of the motion in amendment will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Those opposed to the motion in amendment will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "yeas" have it.

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators.

Senator Lynch-Staunton: I have just written to the Table that Senator Kinsella is the acting whip in the absence of Senator Stratton.

Senator Kinsella: I would propose a half-hour bell.

Senator Rompkey: Senator Murray has enjoined us from time to time that people in the Victoria Building sometimes have a great deal of difficulty getting over here. Perhaps we should have a half-hour bell.

Senator Kinsella: As a very agreeable whip of the opposition, I concur with the chief government whip.

The Hon. the Speaker: The vote will be after a one-half hour bell, which will be at 3:08 p.m. Is it agreed, honourable senators?

Hon. Senators: Agreed.

The Hon. the Speaker: The vote will be at 3:08, with the bells to ring for half an hour, starting now.

Hon. Marcel Prud'homme: Your Honour, it is sad that we do not have one hour, not because I like to have extra time, but because it is a great national day in history. At 3:00 sharp, the House of Commons will pay homage and testimony to the Right Honourable Mr. Chrétien. If we vote at 3:08, no one here will be in a position to attend. I find that very sad. We have had agreements in the past to listen to testimonials to Mr. Joe Clark, to the Right Honourable Prime Minister Mulroney, to every prime minister. That is a major event in the history of Canada, whatever one thinks of a man who served this country so long and, I would say, so well. I am in the hands of the two whips. Perhaps they would like to reconsider so that senators could attend?

Senators Roche and Plamondon would like to join me in this comment.

Senator Carstairs: The bells are ringing.

The Hon. the Speaker: Honourable senators, the bells are ringing. The vote will be at 3:08 p.m.

Hon. Anne C. Cools: Your Honour, I would just note that I believe the motion is now acceptable to all of us and that it was not a government motion. It was a motion by the Honourable Senator Watt. Senator Watt should have been consulted as to the timing of the bells. This is not just a matter between the two whips. It is not a government initiative.

• (1510)

Motion in amendment agreed to on the following division:

YEAS
HONOURABLE SENATORS

Andreychuk	Kinsella
Bacon	Lapointe
Baker	Lawson
Beaudoin	Lynch-Staunton
Biron	Maheu
Bryden	Moore
Chalifoux	Nolin
Chaput	Oliver
Christensen	Pearson
Cools	Pépin
Corbin	Phalen
Cordy	Pitfield
Doody	Prud'homme
Forrestall	Rivest
Furey	Robertson
Gill	Sibbeston
Hervieux-Payette	Sparrow
Johnson	Spivak
Joyal	Stratton
Keon	Watt—40

NAYS
HONOURABLE SENATORS

Callbeck	Losier-Cool
Carstairs	Merchant
Day	Milne
De Bané	Morin
Downe	Poy
Fairbairn	Ringuette
Fraser	Robichaud
Graham	Roche
Harb	Rompkey
Hubley	Smith
Jaffer	Wiebe—23
Léger	

ABSTENTIONS
HONOURABLE SENATOR

Gauthier—1

PARLIAMENT OF CANADA ACT

BILL TO AMEND—THIRD READING—
DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C., for the third reading of Bill C-34, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

Hon. George J. Furey: Honourable senators, I understood that the motion had been adjourned in the name of Senator Kroft, but

he does not appear to be here. I do not know if I should wait or commence. Perhaps we can revert to Senator Kroft later. May I proceed, honourable senators?

The Hon. the Speaker: Honourable senators, we are far enough along that Senator Kroft will be the next on my list, if that is agreeable.

Senator Furey: Honourable senators, I should like to preface my remarks by saying that I fully endorse and support the idea and concept of an ethics officer and a code of ethics for this chamber. However, I must profess that I have problems with Bill C-34 in its present form as the mechanism for attaining this goal.

We have heard many senators raise and debate issues for and against Bill C-34 in its present form. We have heard the “legislative-based versus rules-based” argument. We have heard the “method of appointment” argument. We have heard debate on the question of privilege and many other important issues.

Today, honourable senators, I do not wish to engage in debate on these issues. Today, for a few moments, I would ask all honourable senators on both sides of these arguments to set aside their differences and focus on one proposed section of this bill which I suggest to senators is extraordinary. It is extraordinary in the sense that the removal of this section is, in my humble opinion, necessary to the well-being of this chamber and the well-being of us as individual senators. This section must be removed before we proceed with Bill C-34.

We have occupied our time in this chamber debating such finer points as privilege and whether we are extending it. With all due respect, honourable senators, by speaking extensively about these more complex and most important issues, we may have lost sight of a simpler and very disturbing aspect of this particular bill.

In Bill C-34, in drafting the proposed section 20.6(2), the drafters of this bill have placed the ethics officer above civil and criminal law in whatever is done in the exercise or purported exercise, or in the performance or purported performance of any function of that office.

It is important for senators to take a moment to reflect on what this is actually written. This would be an immunity subsection. It would grant extensive immunity to the Senate ethics officer and anyone acting or purporting to act under his or her direction.

The proposed section states:

No criminal or civil proceedings lie against the Senate Ethics Officer, or any person acting on behalf or under the direction of the Senate Ethics Officer, for anything done, reported or said in good faith in the exercise or purported exercise of any power, or the performance or purported performance of any duty or function, of the Senate Ethics Officer under this Act.

Let us take a moment, honourable senators, to consider the full significance of this proposed provision by analysing its component parts. The first part states that there be no civil or criminal proceedings taken against the ethics officer. In my view, this is the most extreme version of a public authority immunity provision that one could possibly imagine. First, it protects the ethics officer from civil liability.

Why is it important that we consider whether this would be a wise provision? How do honourable senators assure themselves that the information that they will be required to divulge to the Senate ethics officer will remain confidential? How are senators to have any recourse if this ethics officer slanders or otherwise defames the character of any particular senator in public?

Slander or defamation, honourable senators, is seldom done in bad faith. They are often done with the mistaken view that the statements being made are accurate. What are senators to do with a Senate ethics officer who makes statements in good faith that are inaccurate and defamatory?

• (1520)

If the ethics officer or any person acting under his or her direction maligns you, your spouse or your family; libels you, slanders you or impugns your integrity in public and, subsequently, finds that he or she was wrong, you have absolutely no civil recourse against this individual if he or she acted in good faith. You cannot sue them; you cannot fire them. At best, you may get, "Oops, I am sorry;" at worst, "I was only doing my job." That is cold comfort after you or your family's good name and reputation have been besmirched and sullied in the public eye.

This legislation does not see fit to allow senators to have recourse against the Senate ethics officer for defamation, libel or malicious prosecution. While this is bad enough, honourable senators, it is not the most egregious part of this clause. It is the first part of proposed section 20.6(2), which extends the immunity of the ethics officer to cover criminal acts that I find most disturbing. I believe honourable senators should think long and hard before they agree that it is right to give an officer of Parliament immunity from committing criminal acts. This proposed section will put not only this person but also those in his or her employ above the rule of law.

The police do not have the right to commit criminal acts. Section 25 of the Criminal Code, which protects police officers in the performance of their duties, does not give them immunity from engaging in criminal activity. Section 25 states in part as follows:

Every one who is required or authorized by law to do anything in the administration or enforcement of the law, is, if he acts on reasonable grounds, justified in doing what he is required or authorized to do and in using as much force as is necessary for that purpose.

Any honourable senator familiar with the limited scope of the immunity of police officers knows that it does not matter that police officers act in good faith. If they commit a criminal offence, they are liable. There is no criminal immunity for police officers.

Should this section matter to us, honourable senators, beyond the academic point that we are immunizing an officer of Parliament and his or her employees from prosecution for criminal acts? Honourable senators might consider whether, acting in good faith, the ethics officer or an employee might see fit to trespass into the offices of senators. Might it ever occur that a Senate ethics officer, acting in good faith, sees fit to provide himself or herself with access to the computer files of a senator, either in the Senate or from the off-Parliament office or home of a senator? I am less concerned with the likelihood that this may happen than I am with the utter impropriety of having a quasi-judicial officer operating above the criminal law, trampling on the very rule of law.

There are so many ways in which this official will come into conflict with senators that I urge honourable senators to rethink the extraordinary degree of autonomy and immunity that is granted to this official by this particular clause of the bill.

I am not alone in thinking that it is improper to grant absolute immunity from criminal or civil wrongs to a person in authority, such as a prosecutor. In my view, regardless of the inoffensive name of the Senate ethics officer, the structure of this legislation makes this officer, on more than a few occasions, a prosecutor in every real sense of the word.

Prosecutors should not be immune from the law. That is what the Supreme Court of Canada said in *Proulx v. Attorney General (Quebec)*. I quote the following:

4. Under our criminal justice system, prosecutors are vested with extensive discretion and decision-making authority to carry out their functions. Given the importance of this role to the administration of justice, courts should be very slow indeed to second-guess a prosecutor's judgment calls when assessing Crown liability for prosecutorial misconduct. *Nelles v. Ontario...* affirmed unequivocally the public interest in setting the threshold for such liability very high, so as to deter all but the most serious claims against the prosecuting authorities, and to ensure that Crown liability is engaged in only the most exceptional circumstances. Against these vital considerations is the principle that the Ministry of the Attorney General and its...prosecutors are not above the law and must be held accountable. Individuals caught up in the justice system must be protected from abuses of power. In part, this accountability is achieved through the availability of a civil action for malicious prosecution. As stated by Lamer, J. (as he then was) in *Nelles* at p. 195:

...public confidence in the office of a public prosecutor suffers greatly when the person who is in a position of knowledge in respect of the constitutional and legal impact of his conduct is shielded from civil liability when he abuses the process through a malicious prosecution.

The next part of proposed section 20.6(2) extends criminal and civil immunity to any person acting on behalf of the Senate ethics officer. Although this chamber may go through the motions of consulting about the Prime Minister's appointment of the ethics officer of the Senate, it is not even that officer we need to concern ourselves with entirely. Any person acting on his behalf might do the things that we might worry about and then be immune from criminal or civil action. Even if the ethics officer is a retired judge or other well-respected person, this part of the bill extends the criminal and civil immunity to his or her hired staff.

If such staff pass on information to the media that is libellous or defamatory, senators have no recourse. If a staff member improperly acquires information or property of a senator in his or her good-faith exercise of what he or she sees as their duties, then there is no recourse, civilly or criminally, for that senator.

Some senators may have little concern about this bill. They may have few or no interests outside of the Senate. They may feel that they do not have any conflicts of interest. Nonetheless, is there anything that such senators feel should be beyond the scope or grasp of the ethics officer? Surely, senators cannot see this immunity, especially in this officer, as benign. Surely, for the very sake of this institution, we cannot be party to legislation that creates not an ethics officer but an ethics czar who is above the law.

The next part of this proposed section, 20.6(2), extends criminal and civil immunity beyond the acts actually done in the execution of a duty to acts that are purported to be done in the execution of a duty. I take this to mean that the immunity will cover cases where the person working in the office of the ethics officer merely asserts or purports that his or her act was in the performance of his or her duties. This will be sufficient to cloak the action with civil and criminal immunity. That suggests to me that the scope of acts done by the officer or his or her staff, immune from liability, will be as wide as humanly possible.

Honourable senators should not think that this is ordinary language that is put into many pieces of legislation protecting public officers. It is not.

I am not the first or only person to suggest that provisions such as this one are inimical to all of our legal traditions. Many people, from A.V. Dicey in his book, *The Law of the Constitution*, to the Supreme Court of Canada in the case of *Susan Nelles*, have said that absolute immunity is utterly unreasonable as a rule covering public functionaries.

In the *Susan Nelles* case heard before the Supreme Court of Canada, the court was considering whether it was possible for Susan Nelles, who alleged that she had been wrongly pursued by

prosecution. The Attorney General of Ontario argued that they had absolute immunity. The Supreme Court did not even touch on whether prosecutors could escape criminal law because it was unreasonable, in its opinion, to immunize them from even the civil law. Justice Lamer, speaking for the court, said the following:

• (1530)

Regard must also be had for the victim of the malicious prosecution. The fundamental flaw with an absolute immunity for prosecutors is that the wrongdoer cannot be held accountable by the victim through the legal process. As I have stated earlier, the plaintiff in a malicious prosecution suit bears a formidable burden of proof and in those cases where a case can be made out, the plaintiff's Charter rights may have been infringed as well. Granting an absolute immunity to prosecutors is akin to granting a licence to subvert individual rights. Not only does absolute immunity negate a private right of action, but in addition, it seems to me, it may be that it would effectively bar the seeking of a remedy pursuant to s. 24(1) of the Charter. It seems clear that in using his office to maliciously prosecute an accused, the prosecutor would be depriving an individual of the right to liberty and security of the person in a manner that does not accord with the principles of fundamental justice.

The Hon. the Speaker: Senator Furey, I regret to advise that your 15 minutes have expired.

Some Hon. Senators: More!

Senator Furey: I would ask for leave to continue.

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Furey: Justice Lamer continued:

Such an individual would normally have the right under s. 24(1) of the Charter to apply to a court of competent jurisdiction to obtain a remedy that the court considers appropriate and just if he can establish that one of his Charter rights has been infringed. The question arises then, whether s. 24(1) of the Charter confers a right to an individual to seek a remedy from a competent court. In my view it does. When a person can demonstrate that one of his Charter rights has been infringed, access to a court of competent jurisdiction to seek a remedy is essential for the vindication of a constitutional wrong. To create a right without a remedy is antithetical to one of the purposes of the Charter, which surely is to allow courts to fashion remedies when constitutional infringements occur. Whether or not a common law or statutory law can constitutionally have the effect of excluding the courts from granting the just and appropriate remedy, their most meaningful function under the Charter, does not have to be decided in this appeal. It is, in any case, clear that such a result is undesirable and provides a compelling underlying reason for finding that the common law itself does not mandate absolute immunity.

Honourable senators supporting this bill have applauded how strictly the office of the ethics officer is protected against the courts. This insulation can and will be used against senators. This could not happen under a non-statutory regime, and now we will have the worst of both worlds. The ethics officer will be outside our control and outside the review of the court system.

Honourable senators, it does not have to be this way. The structure of Bill C-34 resembles legislation set up to create a prosecutor, with independence and blanket immunity from recourse from both criminal and civil actions. Such legislation is normally aimed at specific social evils such as crimes and breaches of securities. The instruments are constructed to address the magnitude of the evil.

Is this what the Senate of Canada is? Is this what senators are? No prosecutors or police officers in the country enjoy the immunity from criminal proceedings that the drafters of this bill chose to aim directly at the heart of this chamber. The magnitude of the issue of section 20.6(2) is, in my opinion, beyond the quarrelling about whether courts will or will not intervene, beyond quarrelling about privileges, and beyond quarrelling about the appointment process. This inimical provision is conducive to great mischief, great fear and great harm, and it should bring about the delay of this bill; at least until this offensive proposed subsection is removed.

I thank honourable senators for their attention.

Some Hon. Senators: Hear, hear!

Hon. John Lynch-Staunton (Leader of the Opposition): Will the honourable senator allow a question?

Senator Furey: Yes.

Senator Lynch-Staunton: First, I commend the honourable senator for having drawn this to the attention of all honourable senators, in particular those who, like all of us, favour the principles of the bill but realize that there are major flaws in it which must be corrected before it can be allowed to proceed. I would hope that, if Senator Furey or someone else has not already prepared an amendment along these lines, we will make every effort to see that one is tabled, perhaps even today. Meanwhile, I would point out that not only are these extraordinary powers granted to the ethics counsellor, but they also will be granted to the ethics commissioner. Both would have the same extraordinary immunity.

Could the honourable senator explain to me, and to others who are not familiar with it, the term "good faith"? What does it mean? Is it enough for someone to say, "Well, I didn't mean it," or, "I'm sorry, it was a mistake," or, "You're right, I shouldn't have left that document on my desk. I didn't mean to do that"? Is that what good faith is all about? Is that the escape hatch for a

commissioner or counsellor who may deliberately want information to be leaked? Can he cover his tracks by pleading good faith, or is there more substance to it than that?

Senator Furey: I thank the honourable senator for his question. There is some substance and very little comfort in the phrase that circumscribes the behaviour called "good faith." It is a very low threshold and it is generally tied to motive. If an individual, an overzealous employee of the ethics commissioner, for example, is performing his duties, that is, investigating a senator after a complaint has been made, and he chooses, because of his knowledge of computers, to hack into a senator's computer at home or work and retrieve information for which he would normally require a search warrant, he is immune from civil and criminal liability for those acts because he is acting in what he considers to be the course of his duty and acting in good faith.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I would ask the honourable senator if he has exactly the same concerns about the fact that the immunity provision in this bill for our officer is exactly the same immunity provided for the Information Commissioner and the Privacy Commissioner?

Senator Furey: Honourable senators, I have exactly the same concerns. This is an abhorrent provision to put into any legislation. A society that purports to be democratic and live by the rule of law should not be putting anyone above the rule of law — not an information commissioner, not a privacy commissioner, not an ethics commissioner, not any commissioner.

Some Hon. Senators: Hear, hear!

Hon. Joan Fraser: Honourable senators, I of course appreciate Senator Furey's dedication to my principles, but I am completely puzzled about where he finds this assumption that the Senate ethics officer can run riot and invade every aspect of our lives. The Senate ethics officer can do nothing except twiddle his or her thumbs unless we in the Senate have told him or her to do something. The job description, the duties and the responsibilities will all be determined by us.

Senator Furey: With the greatest respect to the honourable senator, I will not respond to that because I feel she may have missed the point of this whole proposed piece of framework legislation and what it is intended to do.

Senator Fraser: I beg the honourable senator's pardon. I spent the better part of a year studying this subject, and I attended many meetings with many learned witnesses discussing it. In my view, it does exactly what I said it does.

The Hon. the Speaker: It is Senator Furey's time, and it is his choice as to whether to take questions or comments. He is indicating that he will take no further questions or comments.

Senator Kroft: No further questions?

The Hon. the Speaker: It is Senator Furey's choice.

Hon. Richard H. Kroft: Honourable senators, I thank Senator Furey for his speech. I think we will no doubt revisit that subject matter, because it is enormously concerning to me and, I know, to many others in this chamber. I would like to go back to 20,000 feet, as they say, and look at our institution in a broader way and, indeed, in a more personal way.

Over this past weekend, I reread a speech I gave in this chamber on June 20, 2000. The subject of the speech was Bill C-20, better known as the "clarity bill." I went back to that speech because it dealt with a difficult personal struggle between my desire to support an important piece of government legislation and my concern over the damage that that bill might do to the Senate as an institution.

• (1540)

The clarity bill was a personal challenge because I felt strongly about the historic importance of its substance for Canada. At the same time, there could be no dispute that it did some damage to the Senate. After much soul-searching I supported the bill and urged other honourable senators to do so.

As I reviewed the clarity bill debate and my personal struggle, it became strikingly obvious to me how different that situation is from the current one concerning Bill C-34. None of the challenges of Bill C-20 are present. What we again have, in my view, is a serious diminution of the Senate. Indeed, in my view, we have a diminution much more serious and far-reaching than that in the clarity bill. This time, however, there is no bargain. There is no trade-off or balancing of priorities. There is no important national purpose that we would have to frustrate in our defence of the Senate.

In saying this, I am not minimizing the importance of a code of conduct and a clearly established procedure in the Senate, indeed not. This we will do. Now, with Bill C-34, there is simply no other program or cause that we have to sacrifice to accomplish that. Here we have what is only an institutional bill. It is only about the Senate, nothing more.

I say that while recognizing that the bill is also about the House of Commons. I have no quarrel with that part of the bill. It is not our business. Neither, however, is the Senate their business, nor is it the business of the executive branch, the Governor in Council. It is the Senate's business, pure and simple. It is all about our duty to the institution of the Senate, ourselves as senators, and all of those who will follow us. We alone will be accountable to the people of Canada for what we do in this institution, just as we alone are accountable for our conduct individually and institutionally.

Let no one believe that the legal and operating structure that we live by will determine Canadians' view of the Senate. As is true in all human affairs, we will be judged by what we do, day in and day out, year in and year out. Let us not allow the spectre of short-term negative media to distort our vision. It is our duty to do what is right as we see it.

Honourable senators, in the effort to understand the nature of this issue, and its specific and narrow institutional focus, nothing could be more helpful than to study the British experience. I do not intend to go through all of that in any detail again. It is well known to most in this chamber, or can quickly be to those who do not know. It is so helpful because it is so clear. It is so contemporary and so relevant. Not only that, we had the benefit of direct and thorough discussion with the principal players who created that situation. We have had the opportunity of personal interchange with them to test the validity of our thinking and, through in-depth questioning, to understand their reasoning and their experience.

What is the Westminster model? To put it simply and clearly, it is about a workable, functioning code of conduct and its administration for the House of Lords, operating with complete independence. How closely our code and practice would resemble theirs is not the issue. We will do what we feel we should, but the principles on which it operates are very persuasive.

One of these principles, and one that is of fundamental importance, is the recognition that we are not the same as the House of Commons. One of the most important differences is that theirs is a house of confidence and ours is not. Whatever position they are in vis-à-vis the executive branch is constitutionally under their control. We have no such relationship and no such power. What our Fathers of Confederation gave the Senate in its place, however, is independence by virtue of two things: appointment and length of term.

Uninformed critics often allege that because we are appointed by a Prime Minister we are lackeys, bound to his will. The truth, of course, lies in the exact opposite direction. Once appointed, we are absolutely free to exercise our conscience — indeed as any judge does who is appointed by the very same process.

For us to accept incursions upon our independence is to compromise one of the most important tools that the Constitution gives us to play our role. Honourable senators, this is not an obscure academic point. It is a fundamental power at the root of our existence as an institution and one we do not have the right to squander for whatever reason.

What is all this talk about independence and power? Why do we value it so highly? We value it highly because it is what we are all about. Power and independence are what allow us to review and amend legislation and, in the rarest of cases, reject it. Power and independence are about carrying out in-depth studies on important policy issues in our committees, with the ability to call ministers and officials to account for their action or inaction. Power and independence are about being the only check on the unlimited capacity of an executive branch, especially with a majority government, to do whatever it wants. Just think what a futile and meaningless place this would be if we did not have the power and independence to do those things that we take for granted every day, and in which we take such pride.

Let me now address the matter of care and attention to our work on this bill. What about careful study for this, the chamber of sober second thought; for this, the chamber justly known for careful and considered study of difficult and complex issues? How do we feel about the time we have taken on the difficult issues involved? I will tell you how I feel, honourable senators. For one, I know that the legislation has come to us with relatively modest study on the other side. Any careful review of proceedings in the other place reveals that what study there was focussed mainly on future rules, issues that are not even part of this bill, and not for the most part on serious constitutional questions.

Even more important is that they quite properly gave absolutely no consideration to the part of the bill regarding the Senate. That is our job, and I hope that we will be allowed to do it. The Senate portion of the bill is now receiving sober first thought. The arguments proclaiming the great amount of time we have had for substantial debate are facetious, at best.

What have we had? We have had a pre-emptive debate on a bill we did not yet have. We have had a committee produce an interim report while admitting that it could not reach consensus on the most important issues regarding this legislation: that is, those issues that are elements of the independence of the Senate. From that interim report came, we are told, the agreement by the government to give the Senate its own ethics officer. We are being told we should be very happy because we got what we asked for.

Honourable senators, this is bizarre. The interim report only went so far as to set out the separate positions for the Commons and the Senate because that is all the committee could agree upon at that incomplete stage of its work. There was no consensus as to the method of appointment of the Senate ethics officer. Yet we are being told to cheer because the bill has given us what we wanted. Thus, to say the interim report was valuable as guidance to the government is hollow indeed. In fact, what it did is it gave the government an invitation to draft Bill C-34 in a way that exploited the incompleteness of the work of the Senate and its committee.

We thus have a bill that represents, on the most fundamental point, the uncompleted thinking of less than a majority of a committee with no knowledge of the beliefs of the Senate. We do not know the feelings of the Senate because the Senate has never been asked, either by resolution in the chamber or when asked to approve a report that is not a report. Honourable senators, we now have that chance. We have been asked.

Honourable senators, we have been told again and again, in speeches and in writing, that the government initiative on ethics is modeled — I think the government even used the word “inspired” — on the highly regarded but never approved Milliken-Oliver report. Perhaps the most fundamental principle of that report is that the Senate should have complete independence in these matters, beginning with the most basic

issue of all, the appointment of its own Senate ethics officer. What do we have? We have an abandonment of that core principle. No lesser authority than the co-author of that report himself, Senator Oliver, has explained this to us with force and clarity.

Further on the matter of appointment, I am impressed by the legal interpretation that a legislated position puts at risk the sanctity of the privileges of this chamber. I personally believe the risk is high and that the jurisprudence makes that clear. While I recognize that there is a range of legal opinion on the nature and extent of that risk, I ask why, whether the risk is 100 per cent or 5 per cent, we would take any risk at all. For what purpose?

• (1550)

I cannot emphasize enough that the reach of the courts into our privileges is not even the most basic issue. The basic issue for me, as I have said, is the principle that we must be clearly and completely independent and in total control of our own rules, procedures and officials. That means basing all we do in our own rules — period, full stop. It is not complicated.

Of those who say that taking an independent course would expose the Senate to public criticism and ridicule, I ask what the Senate is all about if not independence to fill our constitutional role. Do we really believe the Canadian people will ultimately judge us on the technicalities of legal structure rather than on our actual conduct? As for the comparison with provinces, does any honourable senator believe that one in 100 people in any province knows if their legislature has such legislation and how it works? I think we all know the answer to that. People care about the results, and rightly so.

Comments that this debate and alleged delay is about senators wanting to protect their personal interests are rooted in misunderstandings of the most fundamental sort. It is obvious to everyone who reads the bill that there is absolutely nothing in it about rules on conflict, disclosure or anything of the sort — nothing at all. In many ways, we are already years ahead of this legislation in our existing rules, and what we do not have we can add as we deem necessary. All we are talking about now is the legal structure under which any new rules, procedure or positions will be created.

Honourable senators, by now it will be quite clear to you that I feel strongly about the matters before us. Let me close by explaining where I believe we now stand on this issue. We all know that we will be dealing with these matters again, and I believe we all favour doing so in the right way in the very near future. I certainly do. We are ready to do so and the next Prime Minister has put Parliament high on his program. However, it will not happen overnight, not if it is to be done properly. We have an enormous amount of work to do. This work must engage the Senate as a whole in the process of developing new rules and methodologies to meet the needs and constitutional independence of this institution and of Canadians.

We have not yet begun that work. We have not determined what sort of person working in what sort of structure we may want to operate within these rules when we have created them.

Honourable senators, I urge you not to get caught up in pressing an agenda that is not attentive to the essential interests of this institution that we are sworn to serve. Let us place responsibility for the Senate where it belongs — in our hands. Let us stand for the Senate and for the proper place of the Senate in the Constitution of Canada. Let us take the time and fulsome consideration it requires to deal with these matters as they should be dealt with.

Honourable senators, the most important thing I can possibly say to you at this time is this: If the Senate is ever to become irrelevant in Canada, it will not be because of some cataclysmic event; it will be because each time another issue arises that will erode the power and effectiveness of the Senate in some small or not so small way, senators will find it easier, more comfortable, to accept that erosion than to face up to the concerns about the media, the pressure of politics, or a misplaced view of loyalty and responsibility.

In my time here, I have seen these cases arise all too often. Sometimes we have the will and ability to fend off the threat and sometimes not. What I do know beyond a shadow of a doubt is that failure to exercise constant vigilance and personal courage will leave the Senate slowly but steadily weakened. I do not want that to be my legacy to this place.

The Hon. the Speaker: I regret to advise that Senator Kroft's time has expired, although there may be questions.

Do you wish to request additional time, Senator Kroft?

Senator Kroft: Yes.

The Hon. the Speaker: Honourable senators, is it agreed?

Hon. Senators: Agreed.

Senator Carstairs: Honourable senators, I thank the honourable senator for his remarks. However, I find a certain inconsistency in them. He has spent a considerable amount of time on the issue of the independence of the Senate. That is something about which the committee also spoke when they said that the Senate ethics officer must be entirely separate from the House of Commons and the public officer ethics counsellor. He has also praised the Milliken-Oliver report and seems to believe that everything in that report should have become the nature of this legislation. However, the Milliken-Oliver report calls for one officer of Parliament; it calls for a jurisconsult to represent both the Senate and the House of Commons.

On page 3 of that report, it states that a parliamentary officer known as the jurisconsult would be appointed jointly by the Senate and the House of Commons and that this individual would be responsible for receiving disclosure from parliamentarians.

I find a certain inconsistency there, and I would like the honourable senator to address that.

Senator Kroft: I thank the honourable senator for her question and I have absolutely no difficulty responding to it. Unfortunately, it requires me to dispute the fundamental premise of her question because she said something that I did not say anywhere in the course of my speech. I did not say anywhere in my remarks, by implication or directly, that I had accepted everything in the Milliken-Oliver report. I referred to one aspect of that report, which I defined as a core principle, and that core principle was the power of appointment of the ethics official, officer, or jurisconsult as they call it. I very carefully did not go beyond that and my point did not require me to do so. It was the one core principle and I made no suggestion of anything else. In fact, I do not accept everything inherent in the Milliken-Oliver report, and I rather resent, frankly, the suggestion that I made any such statement.

Senator Fraser: Honourable senators, I hope that I did not mishear Senator Kroft as he made his many points. I thought I heard him observe, in tones that I interpreted as being critical in the sense that he seemed to be suggesting that this was a flaw in the bill, that there was no code in the bill, no reference to the rules.

I flipped back to the famous interim report and see on page 3, under subparagraphs 3(c), (g) and (i), sections to which every member of that committee agreed. The honourable senator is quite right that there were points upon which the committee did not reach agreement, but these were points upon which the committee did absolutely agree. They say precisely that the duties and functions of the ethics officer and the rules of conduct shall not be in statute but in the *Rules of the Senate*.

How could we complain, then, if they are not in statute? Should we not be pleased that, as we said, they should not be in statute? They have been taken out of the statute and they remain for us to define, which is what we said we should do.

Have I missed the point?

Senator Kroft: When the honourable senator has the opportunity to read my remarks, which I am sure will be accurately reported, as they usually are, she will see that with regard to the rules I said that some say — and I have heard it said widely and too often — that if we vote down this bill, we will be voting down a code of conduct. What I said was that this bill does not contain a code of code.

• (1600)

I am familiar with the report and all of the extensive discussions that took place and, more importantly, I understand what may lie ahead. If some senators were to oppose this bill, that is, vote against it or ask that it be referred back to committee for further study, they could not be said to be stepping on any rules or a code of conduct because there is nothing in there. Unfortunately, I have come to understand what an incredible educational challenge this process is, because, as soon as somebody sits down and makes that very clear, somebody else will stand up and ask, "How can you vote against a set of rules or a code of conduct?" That concept has, somehow, been engrained in this debate, and I think the media has had some role in that.

We can vote against this without voting against a single rule. We need not express a view on disclosure, on conflict or anything else. That was my point and nothing more.

Senator Fraser: Honourable senators, I withdraw my question. I hope to speak later and then senators may ask me some questions.

Hon. Lorna Milne: Honourable senators, I am sure that it comes as no surprise to anyone at all that I rise this afternoon to speak in support of Bill C-34, to amend the Parliament of Canada Act.

During my time in the Senate, there are few bills that I have supported more strongly — and not from any misplaced view of loyalty. I passionately believe that the time has come for Bill C-34 to pass and for the Senate to establish a strong and rigorous conflict of interest regime that reflects both the best interests of senators and the increasing demands from the public for transparency and accountability in government.

We are a privileged group, we senators, and I mean that in every sense of the word. We have the right to assemble and make pronouncements on the greatest issues that face our country, while passing laws in the best democracy in the world. By virtue of our position, we have the privilege to discipline ourselves and to organize our own affairs. These privileges exist; they are real; and they will never be taken away by anyone. Our ancestors fought for them, first, in England, and then again in Upper and Lower Canada. They exist and are recognized by the courts, and they have always been recognized by the courts.

However, with those privileges come responsibilities and the demands of our service to the Canadian public. The citizens of this country expect that we will measure up to the highest ethical standards and that we will always act in the best interests of our country, not in our own interests. Bill C-34 creates the framework for a new, improved and transparent ethics regime that will meet the needs of both senators and the Canadian public.

There are two critical points that I will advance in my speech this afternoon. First, since we are not elected members of

Parliament, I believe that we should be held to a higher and more transparent standard than our colleagues in the other place, and that our awareness be even more finely attuned to nuances about the conduct of our members.

Second, when looking at the specifics of this bill, honourable senators must understand what it is we will be voting on. This bill merely sets up a framework where nothing more than advice is ever given. Decisions on propriety of conduct will remain entirely within the walls of this chamber and in the hands of senators themselves.

For nearly nine months now, our Standing Committee on Rules, Procedure and the Rights of Parliament has been studying the ethics package that the Prime Minister presented to us. Witnesses have come from across the country to tell us that a statute-based ethics regime has worked for the provinces and will work to significantly improve the public's opinion of honourable senators and the work that we do here.

One witness who raised quite a stir with her testimony was University of Guelph Vice-President Academic, Maureen Mancuso. Professor Mancuso had published a study on the wide-ranging opinions of Canadians on the ethics of MPs, senators, the press and others. In her opinion, Canadians shared a deep mistrust of politicians that did not seem to be going away. She contended that senators in particular had a high disapproval rating and that, if we were lucky, only 40 per cent of Canadians had a positive impression of the ethical standards of senators.

All of us in this place have been working diligently to improve that. We might quibble with the numbers that Professor Mancuso gave us. I do not think the numbers are as bad as she said they are. I do not think Canadians have as negative an impression of the Senate as she said but, if we were being totally honest, could any of us say that she got the general impression wrong? Is it not true, honourable senators, that for many years we have been battling the perception — certainly, ever since I came into this place — that we are living high on the hog and that, as a result, the legitimacy of our institution has been called into question from all sides of the political spectrum?

I suggest to all of you that the public is doing its job by challenging the legitimacy and the conduct of its Parliament. That is the exact role of the public in a modern democracy. In my opinion, it is up to us to give Canadians a positive and strong reason to change their minds about the honesty and integrity of parliamentarians. I believe that the establishment of an ethics officer for the Senate would go a long way to doing exactly that.

I repeat, honourable senators: Because we are not elected members of Parliament, we should be held to a higher and more transparent standard than our colleagues in the other place. The House of Commons is governed by the basic principle that, if the electors of a riding no longer have faith in their MP, they can turf

them out at the next election. That is not the case with senators. Our relationship with Canadians is a bit like a marriage. By and large, Canadians are stuck with us, for better or for worse, until the age of 75, when we divorce. If we want to enjoy the benefits of our secure length of tenure, along with it, I believe, goes a responsibility to be open, honest and transparent in all matters that could even tangentially affect the work that we do here.

One may ask, then: What are the minimum requirements of the open and rigorous regime that I have been talking about? In my opinion, it demands that the structure itself, but not the specific code or rules, be entrenched in statute. There are two reasons for this. First, a statute is difficult to amend. A bill for that purpose would require three readings and committee study in each house of Parliament. The media is finely attuned to the progress of bills and, as such, attempted changes could never escape public scrutiny. If the regime were placed in the rules, it could be changed or even deleted on 24 hours' notice by one vote of 50 per cent plus one of our members present, for example, perhaps on a Thursday in June. That kind of flexibility, in my opinion, does not serve the public well.

Second, statutes are widely circulated and are easily accessible to all Canadians. You can find them at any library in the country. I must tell honourable senators that I do not know of many, if any, libraries that carry the *Rules of the Senate of Canada*. Canadians have a right to know, I believe, about the regime that governs MPs and senators. There can be no more public declaration of a system than to place its structure in a statute.

All of this is not to say, honourable senators, that everything about the new regime should be put into the body of the statute. I have consistently argued that this should not, in fact, be the case. Senator Joyal and Senator Grafstein have effectively argued for the necessity of maintaining the constitutional separation between the various branches of government. I strongly agree with that view. Where we differ fundamentally, perhaps, certainly with Senator Kroft, is on the question of whether or not this particular structure effectively respects that separation. I believe that it does.

• (1610)

Let us be clear on what we are voting on in Bill C-34. This bill does nothing more than create the position of Senate ethics officer. It does so in the same manner as a statute creates the position of the Clerk of the Senate. There are no rules of conduct or potential rules of conduct contained in Bill C-34. If this bill is passed, the job of the Senate ethics officer will be to take orders from the Senate — from the Senate — in order to provide advice on the administration and enforcement of rules of conduct and conflict of interest that already exist within the *Rules of the Senate*. We have those rules today, not only within our rules but sporadically throughout the Parliament of Canada Act and in the Criminal Code. If this position is established, it will take a further

step, a resolution of this place, before we change any of the rules of conduct in this place.

As an aside, I should note that I support the discussion that has already begun within the Rules Committee to draft a new code of conduct comprehensively setting out a new and modern conflict of interest scheme, partially based on the House of Commons' proposed code, on the models contained in most provinces, and on our present rules. However, I point out that this code could only come into effect after full discussion by all senators and adoption by the Senate. Such a code would provide that senators would privately disclose their assets to the Senate ethics officer and be bound by provisions designed to keep the senators' public business from conflicting with her or his declared private interests.

That is all for the future. That is not what we are talking about today. All we are doing today is creating the position of Senate ethics officer, there for the whole world to see.

The method of appointment of a Senate ethics officer has been one of the issues raised many times by opponents of this bill. There are concerns that, under the appointment provisions contained in the bill as drafted, there will not be a sufficiently high degree of consensus in the appointment to generate the level of trust required to install a really top-notch Senate ethics officer that we all can trust and relate to. With the greatest of respect, I disagree with that analysis.

I would refer honourable senators to the comments that I made at second reading in my speech. I will not repeat them at length, you will be glad to know, but I want to stress the fact that there is more consultation called for in this bill than in any of the provincial statutes where ethics officers are appointed. In Alberta, for example, there is not even a vote of the chamber required to generate an appointment. Yet, all of the other provinces report that they have a high degree of confidence in their respective ethics counsellors.

Since I completed my second reading speech, I looked into the appointment of the Auditor General, who was mentioned here the other day. That person is appointed by the Governor in Council and invariably has the support of members of the other side. I was quite surprised to note that, even though this person is an officer of Parliament, appointed by Governor in Council, not one shred of consultation with parliamentarians is required to appoint her to the position.

Under section 3 of the Auditor General Act, the Governor in Council has the power to make an appointment of an Auditor General. No consultation is required, nor is any vote. Yet, for decades, parliamentarians of all stripes have always held our Auditor Generals in high esteem. I suggest to honourable senators that the concerns about the manner of appointment of the Senate ethics officer are not well founded in the very real history of Canadian officers of Parliament.

Getting back, then, to the limited things that Bill C-34 does do, I want to look at the duties that are assigned to the Senate ethics officer. For clarity, I will quote them specifically from the bill. Proposed subsection 20.5(1) states:

The Senate Ethics Officer shall perform the duties and functions assigned by the Senate for governing the conduct of members of the Senate when carrying out the duties and functions of their office as members of the Senate.

Proposed subsection 20.5(2) states:

The duties and functions of the Senate Ethics Officer are carried out within the institution of the Senate. The Senate Ethics Officer enjoys the privileges and immunities of the Senate and its members when carrying out those duties and functions.

The proposed subsection 20.5(3) states:

The Senate Ethics Officer shall carry out those duties and functions under the general direction of any committee of the Senate that may be designated or established by the Senate for that purpose.

Please note that absolutely no decision-making power is given to this officer. She or he does not have the power to subpoena documents. The officer does not have the power to sign a search warrant, nor the power to summon witnesses or hold hearings. The Senate ethics officer will only have such powers as are given to this person by the Senate.

Some have argued that this bill gives all kinds of powers away and that this should concern honourable senators. That simply is not the case. Some have also argued that, if you let a Senate ethics officer make any decisions, the courts will jump in and interfere in our business. However, the Senate ethics officer makes no decisions. All decisions will be made by the Senate and the Senate alone.

Given all of the foregoing, honourable senators, I believe that this bill adequately protects our privileges. All of the decision making resides within the Senate itself and its committees. The work of the Senate ethics officer is deemed to be privileged. That person does not have the power to do anything unless such power is specifically granted to him or her by the Senate. I believe that all steps possible have been taken to ensure that the privileges of this chamber are protected in the creation of this position.

Honourable senators, this is a very good bill. I could not support it more strongly. It gives the public the surety and transparency that only a statute can allow, while clearly maintaining the control within this institution.

Honourable senators, I think the time has come. Parliaments of Canada have been studying this matter for almost 30 years, without bringing the issue to a head.

The Hon. the Speaker: Senator Milne, I regret to advise that your 15 minutes have expired.

Senator Milne: I would seek leave to continue.

The Hon. the Speaker: Honourable senators, is leave granted?

Hon. Senators: Agreed.

Senator Milne: Honourable senators, we need to move to put into place a rigorous, modern, well-structured system before Canadians lose any more confidence in our institution. I urge all of you to pass this bill as soon as possible.

Hon. Jeremiah S. Grafstein: I have one question on the report.

Senator Milne: One question, that is all. I do not wish to take the time of the Senate.

Senator Grafstein: I would ask the honourable senator to refer to a report of the committee that the honourable senator chairs, entitled "Government Ethics Initiative," an interim report of the Standing Committee on Rules, Procedures and the Rights of Parliament, dated April 2003. The report concluded unanimously — I should not say the report concluded — that for those who believe there should be an officer established in statute, which I understand is a position with which the honourable senator agrees:

...it is unacceptable for the Governor in Council to appoint the ethics officer in the manner proposed by the draft bill. There must be agreement of the leaders of the recognized parties in the Senate, followed by a confirming resolution of the Senate itself. Only in this manner can the incoming ethics officer be assured that he or she has Senators' respect and support.

This was a report of the committee that the honourable senator chaired. She has now come to a different conclusion. Would the honourable senator explain the difference between her conclusion then and her conclusion now?

• (1620)

Senator Milne: The bill states quite clearly:

20.1 The Governor in Council shall, by commission under the Great Seal, appoint a Senate Ethics Officer after consultation with the leader of every recognized party in the Senate and after approval of that appointment by resolution of the Senate.

I do not believe for one single second that the government would attempt to impose any ethics officer on this place who was not acceptable on both sides of this chamber.

Hon. Elizabeth Hubley: Honourable senators, I rise to speak in support of Bill C-34 today. I believe the proposed legislation represents an important and necessary step for the Senate, enabling the crafting and establishing of a new code of conduct for all its members.

I realize that some honourable senators have difficulty supporting this bill in its present form. Some fear the undue involvement of the executive branch of the government in the affairs of an independent Senate. There are also senators who believe that matters dealt with under the proposed statute may be reviewed by the courts. Others question the very propriety of disclosing private business and financial information.

However, there is, in my view, an even greater issue before us as we consider the merits of Bill C-34. It is our response to the growing demand of Canadians for accountability and transparency in the work of government, and for a more stringent and effective code of behaviour for all parliamentarians. While clinging to first principles and our sense of legal and constitutional rightness, we must be careful not to offend the rights of the citizens we serve. Indeed, as appointed parliamentarians not required to seek the approval of the people through free election, we have an even greater responsibility, I believe, to be stringent about how we conduct our affairs.

It is a difficult balance, I know, but if we are to err, then I would rather err on the side of impartiality and accountability than to establish and enforce a code of ethics here in the Senate that is entirely self-contained and, therefore, open to the charge that it is also self-interested.

To say that we are absolute masters of our own ship is simply not enough at this juncture in our history, when all public officials and parliamentarians increasingly are being put under the microscope. By subjecting ourselves to greater scrutiny, honourable senators, we are not implicitly admitting guilt or wrongdoing in any way, or suggesting that we have anything to hide from the Canadian people. On the contrary, the Senate of Canada is a noble and trustworthy institution. I am proud to serve here together with so many distinguished colleagues of high character and integrity. It is for this very reason that I believe we should exhibit leadership when it comes to this issue of conduct.

Here in the Senate, our unique role and independence is our most defining characteristic, but it is also, perhaps, our greatest vulnerability. Bill C-34 represents a timely opportunity to demonstrate to the Canadian people that the Senate of Canada functions according to the highest principles and standards, and that, as senators, we are willing to subject ourselves to review.

Susan Riley, writing recently in the *Ottawa Citizen*, referred to the Senate as the chamber of sober self-interest. "Our friends in the Senate" she said, "are up to their old tricks, defending the comfortable and privileged, and, of course, their cherished independence, from the grubby intrusions of democracy..." Honourable senators, we can choose to dismiss Ms. Riley's

comments, and accuse her of misunderstanding the Senate and its role. However, I regret that she does reflect the views of many Canadians, and we should not let this reality escape us.

The Senate is a unique institution possessing its own separate parliamentary power and authority, but we cannot, and should not, live outside the court of public opinion. We need Bill C-34. It is not perfect, but then, who or what is perfect?

Appointing and mandating the ethics officer by statute, while giving the Senate the exclusive authority to determine the code itself, strikes me as a good balance. Clause 20.1 requires the government to "consult with the leader of every recognized party in the Senate..." prior to the appointment of this parliamentary officer. The Senate must then approve the appointment by resolution. Clearly, if a proposed ethics officer was deemed unacceptable by one or more parties, or by a sizable group of senators, that person would not enjoy the confidence of this institution, and it would be impossible for him or her to perform their duties.

In these circumstances, honourable senators, I am sure that any Prime Minister would find another candidate for the job, rather than force the matter politically and use the governing party's majority in the Senate to win approval. On the appointment of such an important officer of Parliament, I simply do not believe that any government could afford to be so blindly partisan.

Honourable senators, I am willing to trust in the goodwill of this and subsequent governments when it comes to recruiting and appointing the Senate ethics officer, just as I am prepared to accept Bill C-34 with, we know, its imperfections and some ambiguities. To do otherwise, I believe, would be to proclaim an undesired independence and arrogance, and to further distance ourselves from the citizens of this great country.

Hon. John G. Bryden: Honourable senators, I would like to talk with you today about our system of parliamentary democracy and our system of government, which was carefully crafted by the Fathers of Confederation and has served us so well for over 136 years, and the Senate's place in that system.

I will also try to explain why the statutory right to have the executive appoint an ethics commissioner or officer within the Senate may lead to very fundamental threats to the autonomy and independence of our institution.

Maybe we all know, but many people in Canada perhaps once knew but forgot, that there would be no Canada if there were not a Senate.

Some Hon. Senators: Hear, hear!

Senator Bryden: The fact is that when the Fathers of Confederation met to try to form a nation, it could not be done. New Brunswick — the province that I come from — and Nova Scotia were not prepared to join a country in which, from the opening gun, Upper and Lower Canada — which had the population — would always rule the nation.

• (1630)

The founders of our country, in the Constitution, created a bicameral Parliament in which they made provision for appointed representatives of the regions of Canada in equal number. Senators were to represent the interests of, at that time, the three regions. I do not want to quote a list of numbers, but there were to be 24 senators from the Maritimes, 24 senators from Quebec and 24 senators from Ontario.

There was to be always an independent and autonomous house of Parliament to bring forward the interests of the less populous parts of our country. We need only look at our previous Parliaments where the representation from Ontario has been overwhelming in government, to understand the need for this house. The representation from certain regions of our country had been sadly lacking. Indeed, in one situation there were no MPs from Nova Scotia, our neighbouring province.

The system that was put in place, while it was difficult to attain, is a marvel because of its simplicity. Our system of democratic government and parliamentary democracy in this country consists of three basic parts. The Crown, in our parlance now, is the executive. The Senate has the charge of reviewing every amendment to legislation that is passed by the lower House, often amending it and, more often than people realize, returning it or vetoing it. Sometimes that is done in the interests of our regions and sometimes for good basic policy reasons.

Each of the functions of Parliament — the executive, the House of Commons and the Senate — operate distinctly and separately from each other. The Crown, the executive, is responsible to and accountable to Parliament, to both the House of Commons and to the Senate. That is the way it was. Later on I will indicate that there has been some erosion of that.

In addition, back in 1867, long before the Charter of Rights and Freedoms, the Senate was particularly charged to look after the interests of minorities and not just the minorities that immediately spring to mind. If you read the literature, the charge was not just for religious minorities, language minorities, people of colour who might be in the minority, and Aboriginals, but also the disenfranchised, the poor, the people who had no one to speak for them. They decided that there should be an independent institution of our parliamentary democracy that could stand up and defend those interests without fear or favour from the executive or from anyone else.

Until now the Senate has been able to perform those functions very well. My life has been a very interesting journey. I started from the farm, went to Mount Allison University, 35 minutes away by car, but I was as scared as if I were going to New York. I had an interest in history and law. I got my law degree and went through the practice of law in the government of the province of New Brunswick. I was taught in law school about the Supreme Court and I was taught that the supreme legal authority in our democracy was Parliament.

[Senator Bryden]

I can remember so well the rules of interpretation. In trying to interpret a section in a statute, one of the rules was that you must look to see the mischief that the provision of the statute was designed to fix. It is interesting to note that the mischief was almost always a situation where the courts, in their interpretation of the law, had gone so far that they had in fact created a new law. That was not their business.

I do know my divisions of power. I know you have to be in the right place. However, if you add together the rights of the provincial legislatures, under the division of powers, and the rights of the Parliament of Canada, then you have all the bodies that control the right to affect all of the legal rights of the citizens of Canada.

That is the way it was. I know I am going a little too far, but I can remember using the illustration that, if you could get it into the right legislature, either Parliament or a provincial legislature, if that parliamentary body passed a law that said John Bryden shall not get out of bed on Tuesday morning, then John Bryden was prohibited from getting out of bed on Tuesday morning. At some time, that might have been a good law.

However, that process has been fundamentally changed. Since 1982, the Constitution Act and the Charter of Rights and Freedoms have changed all of that, resulting in many, many good things. That change has also created a situation where — to be categorical — much of the public policy of our nation is now made by the courts as they exercise what they see as their responsibility to administer and to interpret the Constitution and the Charter of Rights and Freedoms.

There is much blame to go around with this. Some of the blame is that the government, the executive that institutes the bills, has vacated the fields where they should be making the laws and they have requested the Supreme Court to make judgments. Instead, difficult political issues, such as the abortion question or the definition of marriage, are left for the courts to deal with because the House of Commons and the members thereof do not need to carry those issues into their next elections, to be sort of crass in making those comments. It is government by judges, but with all due respect to them, it is by default. Somebody has to do it. The system has changed.

• (1640)

If one thinks about it, it is not a great deal dissimilar from the situation that exists with our neighbour to the south, where, in fact, the Supreme Court makes very significant policy decisions in interpreting the Constitution of the United States of America. At the same time that this was happening, from 1982 on — in fact, the last 25 years — an interesting thing has happened to the executive power in our system, beginning with Prime Minister Trudeau, continuing with Prime Minister Mulroney, with the present Prime Minister, and there is no real indication that it may not continue with the next Prime Minister. There has been an increasing centralization and concentration of the real executive power in one place, and that is a very expanded and powerful Prime Minister's Office.

Honourable senators, if one thinks about it, that, in itself, is closer to the system in the United States. We are about to choose a new leader. Perhaps my honourable colleagues on the other side will do the same thing soon. The point I want to make is that the system we used in the Liberal Party of Canada, for the first time ever, resembled very closely the primary system for choosing candidates for the President of the United States. That is to say, each member of the Liberal Party had a right to vote — not for a representative to go to a convention and vote for the leader who, because of circumstances, will be the Prime Minister — they had a right to vote to choose the Prime Minister. They had the right to individually vote for the candidates —

The Hon. the Speaker *pro tempore*: I am sorry to interrupt the honourable senator, but his time has expired.

Is the honourable senator asking for leave to continue?

Senator Bryden: Yes, honourable senators.

The Hon. the Speaker: Honourable senators, is leave granted?

Hon. Senators: Agreed.

Senator Bryden: Honourable senators will ask: What does that have to do with Bill C-34? An absolutely unbelievable change had occurred in our system in a very short period of time. In many ways, to use a polite term, our system is now a hybrid between the U.S. system and the British parliamentary system. In my opinion, these two fundamental changes, the increased powers of the courts to make public policy and the increased power of the executive and its concentration in the Prime Minister's Office, over the last 25 years, has sapped much of the independence of Parliament and its ability to hold the government responsible and accountable.

In my opinion, with respect to the statutory right of the executive, that is, the Prime Minister's Office, to appoint — I have read the act; there will be consultations et cetera — the bottom line is that that statutory right to appoint, reappoint, or discharge, and the only avenue of oversight of the officer of the Senate of Canada is the first major infringement of this type of executive power on the independence and the autonomy of this chamber. I fear that it has long term implications for the proper functioning of this chamber and for our performance of our constitutional obligations.

With all due respect to those who say, "We must do this, or the *Hill Times*, the *National Post* and other media will say unflattering things about us," at this stage in my career and life, surely we must do the right thing for the continued independence and autonomy of this chamber rather than being stampeded by the concerns of this particular flavour of the month, which may be the basis of attack by the people and the media, who, if they did not have this aspect to attack, would find another area of this chamber to attack. They have been doing it for probably 135 of the 136 years of this chamber's existence.

We must try to do the right thing, not the expedient thing.

I would like to quote from Senator Pitfield, who in fact was here today, from a speech he made a number of years ago in Toronto:

Focusing merely on the change and not on its consequences, as far as the eye can see is to invite mistakes and chaos.

In my nine years in this place, I have never voted against a government bill. There have been some government bills with which I have disagreed. The best example is Bill C-68 — not the whole bill but the part that deals with the registration of hunting rifles and shotguns. My position has been that I would fight issues like that in the minister's office on behalf of my region. I would fight it in our caucus. I would do everything that I possibly could do to ensure that my views were known, and the Minister of Justice at that time used to walk to the other side of the sidewalk if he saw me coming. I felt so strongly about this.

• (1650)

I live by one particular rule in dealing with conflicts in my own mind such as this. After having done the best I could in this process within our governing party, I would not substitute my judgment for the overwhelming collective judgment of other people who had considered the issue carefully and were prepared to go forward with it. The single exceptions are cases where the issue is personal principle and values, fundamental principles and values, or a fundamental threat to the institution that I am so proud to be a part of.

Honourable senators, I do not want to vote against my government this time either. For that reason, among the many others I have already given and could give, but many people have stated better than me, I wish to propose an amendment to the bill.

This amendment, I believe, meets the government's purpose of establishing an ethics officer for the Senate in this statute, on one hand, and the need to protect the autonomy of the Senate by reserving the appointment to the Senate itself in a way that protects the right of the respective parties in the Senate, on the other hand.

The amendment provides that the Senate shall appoint a Senate ethics officer. It is an obligation. The amendment clearly establishes the statutory obligation for the Senate to appoint an ethics officer. This is not a facilitating provision; it is an imperative provision in this amendment.

Further, the amendment would provide that the consent of the leaders of all of the recognized parties in the Senate is required; thus, the rights of the minorities are respected and the trust in the officer to be appointed is maintained.

MOTION IN AMENDMENT

Hon. John G. Bryden: Honourable senators, I move, seconded, by the Honourable Senator Sparrow:

That Bill C-34 be not now read a third time but that it be amended,

in clause 2.

(i) on page 1, by replacing lines 8 to 27 with the following:

20.1. The Senate shall, by resolution and with the consent of the leaders of all recognized parties in the Senate, appoint a Senate Ethics Counsellor.

(ii) on page 2, by deleting lines 1 to 49,

(iii) on page 3, by deleting lines 1 to 11,

I thank honourable senators for their attention.

Some Hon. Senators: Hear, hear!

The Hon. the Speaker: Do any honourable senators wish to speak to the motion in amendment?

Hon. Marcel Prud'homme: I have a simple question for Senator Bryden, honourable senators. Many items take place after consultation between recognized parties. You might remember that I almost led the fight on the floor, and that I was the one who stood up when Mr. Radwanski was appointed, because I had known of him for a long, long time. Eleven senators voted against his appointment. If it were not for someone having the guts to stand up — someone says “too much guts” — the motion would have been just accepted on division.

I do not disagree with consultation. I am not in a mood to speak passionately about how proud I am to be in the Senate, and it is not because a journalist could make me change my mind on the role of the Senate. I am not afraid of journalists. I can take them on.

Could the honourable senator not find a way whereby, ahead of time, all senators could be informed, and not just the two leaders? We have a growing number of people who may happen to know the individual who is selected. We now have Senators Roche, Plamondon, Lawson, Pitfield, St. Germain and myself. Who knows, there may eventually be more on this side. We are not to be consulted at all. I do not mean “consulted” as in being informed; I mean being made aware before the fact. I have always been concerned about that, particularly when it comes to the appointment of officers of this place.

Senator Bryden: The amendment deals with a guarantee that the recognized parties would be consulted. It is not, however, exclusionary of consultation with independent senators, of which there may be more or less. Indeed, there may be more than two recognized parties in this place at some time. There may be three or four.

You cannot put everything in an amendment, as I am sure the honourable senator knows. One of the overriding purposes of this approach is to have an ethics officer and an ethics regime that would be developed for that person to administer that is, out of the gate, something that every senator in the chamber can respect and is prepared to give an opportunity to function and function well. That can only be done, Honourable Senator Prud'homme, by ensuring that everyone is involved in the discussion.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I rise to speak against the motion in amendment put forward by the Honourable Senator Bryden. However, I must congratulate him for the cleanness of his motion, because it is absolutely transparent as to what it is he wants to do. He wants to take the entire bill and remove it, delete it, so that only the Senate of Canada could have any influence on the appointment of this individual, and only the Senate of Canada would respond to what I see as a cry from the Canadian people for accountability and transparency.

Honourable senators, I feel very strongly about the need for an ethics commissioner or officer for the Senate. I do not think we should get hung up on whether it is an officer or a counsellor or commissioner, by the way. However, it is important that we be no less in the eyes of the Canadian people than the members of the other place. The members of the other place have decided that their ethics commissioner should be in statute. We heard earlier today from Senator Milne, and I think in very clear terms, that of all parliamentarians we are the ones who should be answerable to a higher standard. Why? Because unlike all other parliamentarians, all other members of legislative assemblies and members of territorial houses, we never face the electorate.

• (1700)

The executive appoints us. Each senator sitting in this room gets his or her appointment from the executive. I fail, quite frankly, to understand, since we are all appointed in that way, why we have such fear — and it seems to be fear — that a parliamentary officer who would serve as the ethics officer should not be appointed in the same way, particularly when the proposed legislation is extremely clear. The proposed legislation says that this can only be an Order-in-Council appointment after resolution in this chamber. Honourable senators, that is the operative word: “resolution” of this chamber. Then it becomes a statutory position through Order in Council and via this legislation.

Why do I think that? Honourable senators, I want this individual, who takes this position after resolution of this place, to have comfort that he or she must give the very best possible advice to the Senate of Canada. He or she should not be the least bit concerned that by a simple resolution of this chamber we could remove that person, because I do not think that that is the right thing to do.

Some will say that will not happen; we would never have that happen. Honourable senators, we could see that happen. We saw it happen in the Government of the Northwest Territories when they chose to fire their ethics counsellor and he took them to court. That is a situation that can exist. Tempers can rise. People can get angry and they can pass resolutions.

Honourable senators, we need to be above reproach in this matter. We need to ensure that the person we hire will be able to show the integrity of the office in full measure. That is why removal cannot be simple. That is why this specific proposed legislation requires an address of this chamber, but also action by the Governor in Council. That is fairness. That is equity. That is accountability. That is transparency.

Honourable senators, we have heard a significant amount of discussion today from people who say that they want to ensure the powers of this institution. I, too, want to ensure the powers of this institution. However, above all, honourable senators, I want the Canadian people to have faith in us, to have confidence in us. I want the Canadian people to say, "Yes, I respect that they get their office by way of the executive, but when they come to this office I respect the fact that they have an ethics commissioner and that that ethics commissioner is not in place at the whim of senators, but that that ethics commissioner is in place with some protections."

That is why the committee, for example, and I think very wisely, said this appointment should not be for a period of five years. They said if we put in place a five-year appointment, then that five years would correspond with the electoral process and there may be pressure on a new government to influence the reappointment of this officer. We said, no, we want a seven-year appointment. We want it renewable and it can only be renewable by another resolution of this place.

Senator Bryden: It does not say that.

Senator Carstairs: We have a process and that is the only way it could be renewable, Senator Bryden.

Senator Bryden: That is not true. Read the act.

Senator Carstairs: The ethics counsellor, commissioner, officer — we call it an officer of this place — will be totally under the direction of our Senate. The rules of this place will be totally within the discretion of this place. Why, honourable senators, is there such fear?

Senator Forrestall: Thin edge of the wedge.

Senator Lynch-Staunton: Nobody mentioned that word.

Senator Carstairs: Why does it exist? If we are not afraid, then why do we have such reluctance?

Senator Kinsella: We do not like the way you are doing it.

Senator Carstairs: Such reluctance —

Senator Kinsella: There are other ways of doing it.

Senator Carstairs: — to put into place an individual in the same way that we put into place the Auditor General of Canada? I asked one honourable senator the other day if he had any lack of faith in the Auditor General being independent. He indicated no; he certainly did not. However, the Auditor General is an Order-in-Council appointment. The Privacy Commissioner is an Order-in-Council appointment.

Senator Stratton: Fine example.

Senator Carstairs: The Information Commissioner is an Order-in-Council appointment. The very fact that they are Order-in-Council appointments, although some of my honourable colleagues do not agree with me, is what gives them a sense of their independence.

Honourable senators talk about wanting independence, our need for independence. In my view, by this amendment we would deny the same kind of independence to our ethics officer that honourable senators themselves want to have. I find that argument invalid.

• (1710)

Honourable senators, we should heed the words of Senator Roche yesterday. He is an independent senator with no party affiliation. Although in the past he had an affiliation with the party opposite, he chose to come to this place as an independent senator. Senator Roche spoke about the need for us to go the extra mile in terms of transparency and accountability. He urged us to listen to the people of Canada.

I heard it said earlier this afternoon that very few people in the provinces, where there are ethics counsellors and codes of conduct, know anything about them. Well, they certainly know something about it when there is a conflict, because the conflict is pointed out. That is when they know about it.

My position on this issue is, as I have said in the past, based somewhat on my own experience. I sat in a provincial legislature to which I was elected three times. Each year, according to set rules, I had to file with the clerk of the chamber details of the property that I owned aside from my personal residence. If I recall the wording of the bill correctly, if I owned 5 per cent or more of a company, I had to declare that. It was all very transparent and open.

I do not believe that we in this chamber want spousal disclosure, because I think we have matured, but that will be a debate for later. However, in Manitoba we do make spousal disclosure. My husband was a corporate officer of a company, and he divulged all that was required of him. We had no concerns about this because he had to divulge exactly the same things to the American stock exchange on which his company was registered. He had to list the directorships of all his companies with an American stock exchange, so it caused him no concern.

We may not do that. We may have different rules and requirements, and that is up to us. However, honourable senators, please do not fall into the trap of lack of transparency and accountability. Honourable senators have said, "Don't be afraid of the headlines; it will just be a one or two-day phenomenon." I do not agree with that. It will not be a one or two-day phenomenon.

How many honourable senators have come in here on a Monday morning at 11:00 and spoken to students from Encounters Canada or the Terry Fox Centre? I love doing that, possibly because, believe it or not, my first love is not politics but education. Until I became leader, I did that on a fairly regular basis. When other honourable senators who had committed to do this could not fulfil their commitment, someone would come knocking on my door and ask me to speak to the students. I did that as many as 10 times a year. The first question those students asked of me was how I got appointed to this place. They would ask what my obligations are and what standards I must uphold within my position. That is a pretty tough question to answer if you want to be totally honest with young people.

Debate suspended.

BUSINESS OF THE SENATE

The Hon. the Speaker: I regret to interrupt the Honourable Senator Carstairs but, it being 5:15 p.m., pursuant to the order adopted by the Senate on November 5, 2003, I must interrupt the proceedings for the purpose of putting the question on the motion in amendment of the Honourable Senator Nolin to Bill C-49.

The bells to call in the senators will be sounded for 15 minutes so that the vote may take place at 5:30 p.m. Call in the senators.

The sitting was suspended.

• (1730)

The sitting was resumed.

BILL RESPECTING THE EFFECTIVE DATE OF THE REPRESENTATION ORDER OF 2003

SECOND READING— MOTION IN AMENDMENT NEGATIVED

On the Order:

Resuming debate on the motion of the Honourable Senator Smith, P.C., seconded by the Honourable Senator Léger, for the second reading of Bill C-49, An Act respecting the effective date of the representation order of 2003.

On the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Stratton, that Bill C-49 be not now read the second time but that the subject-matter thereof be referred to the Standing Senate Committee on Legal and Constitutional Affairs; and

That the Order to resume debate on the motion for the second reading of the Bill remain on the Order Paper.

The Hon. the Speaker: The question is as follows:

It was moved by the Honourable Senator Nolin, seconded by the Honourable Senator Stratton:

That Bill C-49 not now be read the second time but that the subject-matter thereof be referred to the Standing Senate Committee on Legal and Constitutional Affairs; and

That the Order to resume debate on the motion for the second reading of the Bill remain on the Order Paper.

All those in favour of the motion in amendment will please rise.

Motion in amendment negatived on the following division:

YEAS THE HONOURABLE SENATORS

Andreychuk
Beaudoin
Cochrane
Doody
Forrestall
Johnson
Keon

Kinsella
Lynch-Staunton
Nolin
Prud'homme
Rivest
Robertson
Stratton—14

NAYS THE HONOURABLE SENATORS

Bacon
Banks
Biron
Bryden
Callbeck
Carstairs
Chalifoux
Chaput
Christensen
Cools
Corbin
Cordy
Day
De Bané
Downe
Fairbairn
Finnerty
Fraser
Furey
Gauthier
Gill
Grafstein
Graham
Harb
Hubley
Jaffer

Joyal
Kenny
Kroft
Lapointe
Léger
Losier-Cool
Milne
Moore
Morin
Pearson
Pépin
Phalen
Plamondon
Poulin
Poy
Ringuette
Robichaud
Roche
Rompkey
Sibbeston
Smith
Sparrow
Stollery
Watt
Wiebe
Merchant—52

ABSTENTIONS THE HONOURABLE SENATORS

Nil

THE FINANCIAL ADVISORS ASSOCIATION OF CANADA BILL

PRIVATE BILL TO AMEND ACT OF INCORPORATION—MESSAGE FROM COMMONS

The Hon. the Speaker informed the Senate that a message had been received from the House of Commons returning Bill S-21, to Amalgamate the Canadian Association of Insurance and Financial Advisors and the Canadian Association of Financial Planners under the name the Financial Advisors Association of Canada, acquainting the Senate that they had passed this bill without amendment.

PARLIAMENT OF CANADA ACT

BILL TO AMEND—THIRD READING— MOTION IN AMENDMENT—VOTE DEFERRED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C., for the third reading of Bill C-34, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

And on the motion in amendment of the Honourable Senator Bryden, seconded by the Honourable Senator Sparrow:

That Bill C-34 be not now read a third time but that it be amended,

in clause 2,

(i) on page 1, by replacing lines 8 to 27 with the following:

20.1. The Senate shall, by resolution and with the consent of the leaders of all recognized parties in the Senate, appoint a Senate Ethics Counsellor.

(ii) on page 2, by deleting lines 1 to 49.,

(iii) on page 3, by deleting lines 1 to 11.,

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I want to conclude with just a very few more remarks.

I spoke about being in this chamber with young people. I want to be able to tell them that we have an independent ethics officer; that that independent ethics officer gives us advice. He is, yes, under the control of the Senate; but we cannot remove him easily because there are a number of steps — not just one step but a number of them — that would have to be taken to do so.

We tried a different system, honourable senators. There has been a lot of criticism of a man by the name of Howard Wilson — a lot of criticism. I think it is unjustified criticism. He is my ethics officer. As a minister, I go to him. I have also recommended that

senators go to him on occasion, when they have asked me a question that I cannot answer because our rules do not seem to have an answer. He has always been extremely courteous, informative and helpful to them.

Let us be honest: His position has not been universally acceptable. Why? Because he is appointed and reports to the Prime Minister. That is why we have changed it in this legislation.

Senator Lynch-Staunton: Ten years later!

Senator Carstairs: That is why we will now have an independent ethics commissioner for public office-holders, for members of the cabinet, for members of the House of Commons.

We here in the Senate say, "We don't need one. We don't need one who will be independent in the same way." Well, honourable senators, I respectfully disagree with that position. I would say, honourable senators, that this bill has been 30 years in the making — 30 years in the making! Senators and members of Parliament have talked and talked and talked. They have talked it through prorogations so it disappeared off the Order Papers. I beg you, honourable senators: Do not do that this time!

Some Hon. Senators: Hear, hear!

• (1740)

Hon. John Lynch-Staunton (Leader of the Opposition): I have many questions, but I am sure they will be asked by others. I just heard the word "prorogation." I was being faulted when I made mention of it. Is the minister now confirming that there will be prorogation? Is that what this is all about?

Senator Carstairs: No, honourable senators, I am not confirming or denying anything, since I simply do not have any information.

Senator Lynch-Staunton: The honourable senator must have some because her deputy leader gave a notice of motion earlier that the Senate would be sitting on Monday, the day before Remembrance Day, therefore upsetting the schedules of some of us who, every year, even before coming here, would attend a traditional cenotaph ceremony. I live in Georgeville, Quebec. The Remembrance Day activities start at 9 a.m. If we are here through Monday night, I will not be able to attend.

I am not the only one who would be affected by this. Some senators live much farther away. We are being asked to come back on Monday — and we are told that this has been done before — and perhaps on Wednesday of next week, when we are scheduled to sit the following week. That is our regular schedule. We are asking about prorogation and we are being told: "No, I don't know. Maybe, maybe not."

On the subject, can the honourable senator tell us why we are or might be coming back next week, according to the notice of motion?

Senator Carstairs: Indeed, honourable senator, we may come back next week. We have lots of work to do.

Senator Lynch-Staunton: Why can that work not wait until the following week, since our calendar takes us into December 22, 23 and come back in January, if need be?

Senator Robichaud: Let us do it now.

Hon. Richard H. Kroft: I have a question or two for the honourable leader.

Senator Lynch-Staunton: Show some respect to veterans!

Senator Kroft: In the interests of clarity, I have a question for Senator Carstairs. The honourable senator talks to her students in the chamber about projecting the future that she would like to see, and she would like to tell them that we have an ethics commissioner who cannot be easily removed. I ask this question irrespective of any individuals who may have held office or may in the future hold office: Is it Senator Carstairs' view that the public would have more confidence in an appointment made by this chamber or an appointment made by this chamber in which the Prime Minister of the day has a hand? Is it the case that the addition of the Prime Minister of the day having a hand in the appointment would enhance the public's view of the appointment?

Senator Carstairs: Honourable senators, I believe it would be enhanced if the officer of this chamber fulfilled exactly the same obligations as other parliamentary officers, such as the Privacy Commissioner, the Official Languages Commissioner and the Auditor General. Those are Order in Council appointments, not easily removed. They are independent from, I believe, all political interference. The Auditor General is an Officer of Parliament that we have had for some 125 years. I think that is clear evidence that Auditor Generals have been extremely independent.

Senator Kroft: I do not think my question was answered. Let me turn to another.

Senator Carstairs expressed concern about an officer or counsellor, or whatever we would choose to call this person, being able to be dismissed on a whim. What does "a whim" mean in parliamentary terms? "A whim" is when those sitting here make up their minds about doing something and do it. Another meaning of "a whim" is to act on a wish. It can also be called "a resolution," and that is what we would do. By resolution of this house, we would be able to dismiss this person.

In my speech earlier, I tried to make the point about the distinctions of this chamber and others. The honourable senator suggests that we look to other chambers across the country, and look to other provinces, but there are no other upper chambers. All of them have what the House of Commons has, and I referred to that in my speech as a power that we do not have, because their

whim, their opportunity to act on a resolution, their power — and I was taught as a lawyer to look at every case not in the ideal but in the extreme, as if someone were doing mischief — is to dismiss the Prime Minister. We are not talking about an arcane situation; we are talking about real, live, political reality. In a house of responsibility, in a responsible chamber, which is every other chamber, that is what provides members with their ultimate safety, their ultimate power, and through them the Canadian people; because their whim, their resolution, their action can dismiss someone. We lack their power.

The honourable senator talked about terms. It is a fact that senators do not have to retire until they have reached the age of 75. That is our power. We are told that situation would apply to an ethics officer of this place because that would be an executive appointment, as is ours. It is a "one-time act." Once we are here, we are, within the broadest of limits, untouchable.

These analogies, which the honourable senator uses so glibly, with all respect, are not solidly based in constitutional law or reality. In this debate, I would like to see us comparing an upper chamber with an upper chamber, and an elected, responsible chamber with an elected, responsible chamber. Let us not mix analogies and metaphors to the point where we are drawing invalid conclusions.

Senator Carstairs: The honourable senator and I are in total disagreement, because I believe the very fact that we are an upper chamber requires from us a higher level of responsibility because —

Senator Kroft: You are refusing to address —

Senator Carstairs: I am sorry, senator, but I did not interrupt you.

Senator Kroft: That is right.

Senator Carstairs: The fact is that we are a an unelected chamber. The ultimate power is not, I would suggest, the removal of a Prime Minister by members of the House of Commons; the ultimate power is the power of the people to remove elected members. That is the ultimate power. They have that ultimate power sometimes every three years, sometimes every four, but definitely, within the Constitution, every five years.

Senator Lynch-Staunton: What is the point?

Senator Carstairs: That is the ultimate power. We who are here until age 75, we who are, therefore, I believe, subjected to a higher standard, or should be, must not, by virtue of this amendment or defeat of this bill have it said in the public venue — as it certainly will be — that somehow or other statute is good enough for elected members but statute is not good enough for non-elected ones.

Some Hon. Senators: Hear, hear!

Senator Lynch-Staunton: I would maintain that we in this chamber, because we are appointed, are under closer scrutiny than are members of the elected House. Let us just say that one of us had taken that famous plane and gone to that famous fishing camp. We would have been asked to resign, whether a senator on the opposition side or the government side. Why? That would be because of our reputation. Yes, our reputation is suspect at all times, unfairly so, but it is.

Any time you see an article on the Senate, there is always some nasty part to it. The media for the most part refuses to admit categorically, outwardly, that good work is done here, by ignoring it most of the time. That is how they treat us, except when one of us missteps. I do not have to repeat the cases that we have suffered through here. We took corrective actions ourselves; we did not need a code of conduct to do it. Maybe we were late, but he was not one of our members. It was not up to us to sanction him.

• (1750)

Senator Robichaud: He was a member of the Senate.

Senator Lynch-Staunton: He was a member of the Senate; we were late, but we dealt with it — and we learned from it and changed our rules accordingly. We are under so much scrutiny here that we can hardly make a move. If it is a misstep, we are caught up right away and we are a headline.

Ministers over there have taken these flights and have been told — all of them — that it is perfectly all right, knowing full well that those flights are for one purpose only — lobbying efforts. One minister took the flight, went to the camp, and he is told, "It is all right that you went there because you were invited by a guest." However, he was not allowed to go the second time because he was invited by the owner. Same house, same river, same fishing rod and all — 10 years of fraudulent ethics application by an individual, named by the Prime Minister, reporting only to the Prime Minister and seemingly finding ways to excuse unethical behaviour.

In this place, the public is following us; the press is following us. I resent it being said that because I am appointed, I somehow have to answer to a higher standard than others. I like to think that we are always maintaining the highest of standards here, and we do not have to compare ourselves with others. We have our own standards here, we are meeting them here and we can do so without a code of ethics.

I feel that having complete authority over the ethics counsellor and naming him ourselves will put us under even closer scrutiny. We will have the responsibility to justify the naming of an individual for whose actions we would be completely responsible, whereas under the law, he is imposed upon us. It is to be done after consultation with the leader, not after agreement, and it is to be done on a majority vote, which means that it will be a

government appointee. If he does not do his job properly, we can point the finger at someone else; whereas, in this case, we are taking on more exposure and making ourselves more liable to criticism if we name our own person. That is of advantage to the public, and it is certainly of advantage to us.

Second, and I will finish on this point, we are putting the cart before the horse. Senator Kinsella mentioned that before. What will the ethics counsellor have to do? We will write our own code of ethics. That is in the legislation. Our committees will be responsible for fleshing out this code. We will write everything. We will set the conditions. We will do just about everything, except name the individual responsible. Yet, the individual who will be responsible has yet to be told what he will do. We have no code.

Why do we not come up with a code of conduct right now? There is one floating around the Rules Committee. I do not know whether or not it was given out at an in camera session. In any event, I have a copy; I certainly will not reveal it. However, there is nothing in it that should not be discussed. Why do we not tell the Canadian public, "Here is the code we want our ethics counsellor to apply." Thus we can show that we are getting serious about this issue.

I also resent being told that we are acting here on a whim. This is the word that the Leader of the Government used. I also do not like the comparison of being told, well, the Auditor General is named by Parliament, and the Privacy Commissioner and others. That is true. However, the Auditor General has no right to unilaterally come and pry into my private affairs and, in good faith, release them in public.

The Hon. the Speaker: Senator Carstairs?

Senator Carstairs: First, let us be clear. This individual can only be appointed in the ultimate step of Order in Council after we have passed a resolution in this chamber. That is the only way it can happen.

Senator Lynch-Staunton: I agree completely.

Senator Carstairs: In terms of the code of conduct, I would like to think that it is very far advanced — that it could, with very few additional meetings, be one that is satisfactory. That is exactly what happened in the other place. They passed the legislation. They will be spending tomorrow debating the code of conduct in the other place. I think it is something that is easily achieved quite quickly, and that this individual will have work to do.

Hon. Herbert O. Sparrow: Honourable senators, when the Leader of the Opposition asked a question pertaining to sitting next week, it was a question in regard to the speech that was made because of Remembrance Day. My question, in turn, would be to the Leader of the Government.

We are worried about the image of the Senate, and we should be, but the image will be really bad if we decide that we will not be able to attend our Remembrance Day ceremonies this coming week. I think that is crucial to us — in particular, when you talk of those of us who do not live in Toronto or Montreal. We just cannot make it home and make it back to do those ceremonies. I think we talk out of one side of our mouths about the image of the Senate, and out of the other side we are prepared to destroy it. Perhaps you can answer that point in answering the other question.

The other question I have concerns your statement about senators having higher ethical standards — that we should have higher standards than the executive or the House of Commons. Why do you think that? All parliamentarians and executives should have the highest ethical standards. Why would we even think differently than that? What we expect from ourselves — and we have exercised it — we would expect from all of the government people, be they employees, elected people or the executive. You are differentiating and saying, we have to have higher ethical standards.

I believe that this chamber does have the highest ethical standards now. The people who sit here now, and with whom I have sat, have the highest of ethical standards. I would ask the Leader of the Government in the Senate if she would explain to me what particular higher ethical standard she would ask of us than she would ask as a citizen, as a Canadian, of members of the House of Commons or members of the executive? Give me an example of what she would say we should have as a higher ethical standard in this regard.

Perhaps you could answer, in turn, the question of what you consider to be ethical standards? Explain to me what you decide or determine to be ethical standards. Is it outside of honesty and pecuniary interest, et cetera? It is something that I cannot capture in my mind — what those ethical standards might be that the honourable senator is referring to.

Senator Carstairs: Let me begin with the first part of your question. That is exactly the reason why, in the notice put on the Order Paper by the Honourable Deputy Leader of the Government tonight, it was clear that when we sit next week, we will not sit on Tuesday — which is, of course, Remembrance Day — because that would be most insulting to our veterans. I think that veterans around this country would certainly appreciate — if we could not get home — our attendance at the ceremony here in Ottawa, which is a highly important ceremony for all of us who have ever been there on that day.

In terms of the highest ethical standards, what I am referring to, honourable senators, is the fact that the amendment that has been proposed by the Honourable Senator Bryden would say that members of the House of Commons shall have their ethics officer enshrined in statute; that the public office-holders and cabinet ministers should have their ethics officer enshrined in statute, but that the Senate should not. I simply do not accept that.

Senator Sparrow: I do not think the honourable senator heard what I said in regard to the Remembrance Day ceremonies. It is pretty glib to say that we can go to a ceremony here. We have, for all these years, gone to the ceremonies in our own areas, in our own constituencies, as such. They expect us to be there, and we expect to be there and we want to be there. We just cannot say we will go somewhere else — like a member of the Rotary Club might do, go on Mondays somewhere in the country. This is not the issue at all.

Some Hon. Senators: Hear, hear!

Senator Sparrow: It is extremely important that I be able to serve my duties in the Senate and, in turn, serve that important day in my constituency. I cannot do both. I appeal to the Leader of the Government in the Senate to reconsider that.

The other thing that I am concerned about in her answer is that she did not answer what ethical standards she may conceive that senators should have that other members of Parliament should not have, or that it would not be necessary for them to have.

Senator Carstairs: Honourable senators, the rules have not yet been written; the code has not yet been written. That will be written by the people in this place. I have indicated that I hope that it will be a very high standard that we would ask our senators to fulfil.

Honourable senators, I did some research in the records of the Senate of Canada, and there were some occasions when we sat on Remembrance Day.

Senator Sparrow: That does not make it right.

The Hon. the Speaker: Honourable senators, I am sorry. It is 6 p.m. The rules require me to leave the chair unless there is an agreement not to see the clock.

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I wonder if we could find consent not to see the clock.

[English]

The Hon. the Speaker: Is it agreed, honourable senators, that we not see the clock?

Some Hon. Senators: No.

The Hon. the Speaker: If there is no unanimous agreement that we not see the clock, then I must see the clock. It being 6 p.m., I must leave the Chair and return at eight o'clock this evening.

The Senate adjourned during pleasure.

• (2000)

The sitting was resumed.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): My question is to the Honourable Leader of the Government in the Senate. I would like to ask Senator Carstairs about two areas.

First, I will build on what Senator Sparrow was asking about the notice of motion that has been laid down by the government that next week it wishes to sit on Monday and then on Wednesday, and I take it the rest of next week.

I can assure honourable senators that I will be here on Wednesday and the rest of the week, but I will not be here on Monday. I shall be laying a wreath at the cenotaph, as I do annually, in my province of New Brunswick. This year I will be laying a wreath in memory of our veterans and those who paid the supreme sacrifice at the Cenotaph in Oromocto, which is the location of CFB Gagetown. I would hope that all honourable senators would be at a cenotaph in his or her community.

The minister made reference to the fact that we do not have to go to our local cenotaphs; that we could attend at the National Cenotaph here in Ottawa. I wonder if she would like to revise that position, or indeed whether that is her strong position that she does not want to revise.

Senator Carstairs: Honourable senators, we took an oath of office to do our work. Our work is not proceeding nearly as quickly as I would like to see it proceed. Therefore we will call back the Senate of Canada for Monday and Wednesday, at least, of next week.

Senator Kinsella: Here we are, honourable senators, with an ethical conflict. We have an obligation, I agree with the honourable senator, to act in an ethical, moral, appropriate, and honourable fashion in doing our duty and being in our places. No one has been more assiduous at being in her place than the honourable minister. She sets a good example for all of us in terms of her assiduousness.

Some of us hope that we are doing our duty as well. We see that norm of being here. However, we also have another ethical standard that we attempt to meet. That is to honour those whose paintings around this very chamber speak to us from the Great War.

Honourable senators, we are faced with an ethical conflict. I wonder why the minister does not think that we could not complete this work between November 12 and our Christmas break, as the published Senate calendar provided. Indeed, all of next week was to be off.

On balance, what is the ethical thing for a senator to do — to go to the cenotaph or to come here? That is a moral dilemma. I do

not know. Perhaps other senators can help me resolve that dilemma.

I will turn to another question. I have tried to listen carefully to the debate. There are at least two major schools of thought in this debate. With any debate, the proponents of one school will argue vigorously, as they should. Those of another school of thought will argue vigorously, as they should. Does the minister not admit to the possibility that she may be wrong and her colleagues and other honourable senators may be right on this one? Does she admit that there is a possibility that, although vigorously and quite capably argued, she might be wrong?

Senator Carstairs: Honourable senators, let me be rhetorical and ask the honourable senator if he thinks the same thing.

Senator Kinsella: Honourable senators, I have often been wrong. That is why I enjoy arguing. I think the word "argument." Argument is a good thing. One advances one's argument, but one also listens to the other side of the argument. Therefore, I admit that, yes, I can be wrong. I may instruct the argument of others and, at the end of the day, very often find myself saying, "Yes, I was wrong and I have learned. I have been instructed by the better argument from the other side."

Senator Carstairs: That is very good for the honourable senator. That is why I have been sitting here through every single speech on this topic since it began.

Honourable senators, it is time to move on to other people who wish to speak to this matter. I will take questions, if there are questions, for another 10 minutes, but then I will not take any more questions and allow other senators to participate in this debate.

The Hon. the Speaker: Are there other senators who have questions, or other senators who wish to speak?

Hon. Joan Fraser: Honourable senators, I wish to speak if no other senator wishes to take the floor.

As I have been thinking about this bill, I have been reminded once again, as we so often are here, that the hardest challenges that we face in political and parliamentary life are the challenges that arise when we need to reconcile legitimate but conflicting interests. That is once again the difficulty in which we find ourselves.

I should tell Senator Kinsella that, indeed, over the course of this debate, over the many months that this debate has continued, I have been enriched from what I have learned from those who have differed from me. I have changed my views on some very important elements of this case. In the end, though, we still must deal with the fact that we have a conflict between two legitimate interests. It is our job to reconcile those interests.

The two interests in this particular case are both important and go to the heart of what our system is about. One interest is to preserve the rights and independence of the Senate, otherwise sometimes known as the privilege of the Senate. The other interest, which is equally important, is to maintain and enhance public confidence in the independence and integrity of the parliamentary system, which exists to serve the public.

I find myself saying more and more often, as I get older and look at the complexity of life, that democracy only works if people believe in it and if people believe that it is a system of integrity. The demands and needs of the public change over time. I am not talking about the flavour of the week; I am talking about great, long shifts in public concepts over time. For example, 600 or 700 years ago, we thought it was all right to have Star Chamber trials. We no longer think that.

• (2010)

Senator Cools: We do so in this bill.

An Hon. Senator: Order!

Senator Fraser: Having talked in those general terms, I will speak to what is, perhaps, the core difficulty that we have been wrestling with on this issue. I agree with other senators who believe we need to have a modernized ethics regime that fits our own needs and the needs of the public in the 21st century. If we are to have such an ethics regime, it must include an administrator, perhaps simply as a custodian of the files, and someone has to appoint that person. That is where we run into practical difficulty. Who should appoint that person?

If that person were appointed only by the Senate — if only the Senate were to have a voice in the appointment of that person — it would seem to me that, just as night follows day, that person would be perceived to be under the thumb of the Senate and thus permanently vulnerable to pressures exerted by those whom that person would advise and whose files and information would be entrusted to that person. That is a terrible burden to bear.

Earlier we heard a reference to poor Mr. Howard Wilson. I believe that he has been doing his very best to do his job. However, it does not matter how good he is because, in the public discourse, he has been so badly tarred with this image of being beholden to the people whom he is supposed to be advising that he labours under an impossible handicap, and it has tarnished public faith in the integrity of the process that he is supposed to uphold. We do not want to do that. We do not want to find ourselves with an ethics officer who is tarnished before he or she can even take the job because the public does not think the system is clean and independent.

I offer you a further thought. If we are the only people who have any voice in that person's employment, that person may feel a conflict, particularly when the time nears to seek a renewal of his or her mandate. That is why, months and months ago in the

Rules Committee, I was trying to suggest to honourable senators that we should have a single-term, non-renewable mandate so that kind of pressure would never occur. I did not win that battle. Members of the committee thought, and I accept their reasoning, that it was more important to have institutional continuity to build expertise and understanding of the complexities of our lives with this person who would be established to advise us; and that is fine. That being the case, we truly must work hard to ensure that it is clear to all that this employee of the Senate is not beholden to only us, is not under only our thumb, and perhaps easily influenced, in inappropriate ways when hard cases arise.

Who else then should have a voice? Bill C-34 proposes quite a good system. Honourable senators would have a veto and the Governor in Council would be ultimately responsible for implementing the appointment that we had approved. I do not share the view that the majority in this chamber would ever rubber-stamp an inappropriate choice.

As we heard earlier this day, if sufficient members of the government side in this chamber believe that something is important, they will vote against the government. That happened today and not for the first time; it is not the first time that most of us have seen that happen. If an inappropriate recommendation were made to us, we would not accept it. I believe that with my whole heart. That is why I believe that, with the system proposed in Bill C-34, the Senate's interest in respect of the appointment of the ethics officer would be appropriately safeguarded, as would be other great interests of safeguarding the public's faith in the integrity and independence of our ethical system.

Honourable senators, the time has long passed, and I have said this before, when we can hope to tell the public with any degree of conviction or any degree of persuasiveness, "Trust us; just trust us to do the right thing." It does not work that way anywhere in modern society and it does not work here, either, I am afraid. It may be that some senators do not believe that public opinion matters in this instance, but that is a risky attitude to adopt. Carried to an extreme, that attitude is not unlike that of the pre-Civil War Stuarts — as if there were some kind of divine right of senators. There is no divine right of senators. We have to be, and be seen to be, the servants of the public.

I was reminded today of something that happened when I was appointed to this chamber. An old friend of mine, with whom I had worked on a daily basis for 20 years, was the eminent cartoonist of *The Gazette*, whose pen name is Aislin. The next morning, on the editorial page of *The Gazette*, my old friend had drawn me turning into a pig at the trough. There were words in the cartoon to ease the bite of that message and because I knew he was my friend and because I had faith that in my own community the people who saw the cartoon would know me well enough not to think that I was a pig at the trough, I was not excessively hurt. Indeed, the cartoon hangs on my office wall today. At the other end of the country, someone who saw the same cartoon would have had no reason to think other than, "Oh, another pig at the trough."

That is what a significant portion of the public thinks of us, senators. They are wrong, but they do think that. If we were to give ourselves what is perceived as special, extra-soft treatment that would enable us to indulge self-interest, then that perception would damage us and would damage, one more time, the political fabric of a country that deserves better.

That is why, despite my great respect for Senator Bryden, I cannot support his amendment and why I do support Bill C-34 as it stands before us. I am hopeful that most honourable senators will do the same.

Some Hon. Senators: Hear, hear!

Senator Sparrow: The honourable senator just mentioned that some here would believe that public opinion does not matter. I do not think I have ever heard that statement in this chamber or anywhere else from senators. As far as I know, all senators are concerned about public opinion. We operate on the basis that we wish to be well-thought-of in the public polls.

• (2020)

As we look at it, sometimes one must vote against what might be a body out there that is opposed to one's thinking. There have been many occasions in the past when those things have happened, for example, in relation to hanging, to divorce and to all of those other things, when there was a split in the public view, right down the middle, and a decision had to be made. I am sure no one wants to make that kind of decision. It would be wonderful to make it where you had 100 per cent agreement.

Would the honourable senator advise me: Did she mean that? Does she believe that there are people here who say they do not give a damn about public opinion?

Senator Fraser: Honourable senators, in response to Senator Sparrow, I am sure that I used the word "may." I do not pretend to be able to read the minds of my colleagues. Some of the things that I have heard people say have led me to think that perhaps some people might have some element of that concept in their thinking.

To go to the more substantive portion, in my view, of Senator Sparrow's comment, it is true that we are often called on to vote our conscience. The death penalty is an excellent example. Many are the legislators who have voted against the death penalty, even though his or her constituents favoured it, or a majority of them did.

The difference is that in the case of Bill C-34, we are not dealing with matters of principle that affect third parties. We are dealing with matters that affect ourselves. Therefore, we must strive even more than we normally would to maintain public confidence in the integrity of the public's Parliament.

I would be glad to hear other senators rather than going on eating up time myself, if they wish to speak.

Senator Prud'homme: Go on, it is interesting.

Senator Kroft: I do have a question.

Senator Fraser: I will take Senator Kroft's question because I invited him to put the question earlier this day, but after that I will cut it off.

Senator Kroft: I am putting the question as a way of clarifying something that is very important. It follows on the question of Senator Sparrow. Would the honourable senator not agree that there is a significant difference between saying, "I do not care or we do not care what public opinion says," and what I said in a number of ways in my remarks, that if we feel that what we are doing is right, we must not let public opinion, whatever it is, intimidate us? Does the honourable senator accept that there is a distinction between those two things?

Senator Fraser: Of course I do. I believe I tried to suggest that when I was responding to Senator Sparrow.

Set aside for the moment the phrase "public opinion," which is sometimes loaded because that gets you into government polls and accusations of all kinds, and think in terms of public confidence in the political process. That is what I am talking about when I talk about public opinion in the context of this bill.

I know that many senators have thought long and hard about this bill and about all the implications behind it, codes of ethics, legislative versus rules-based systems and parliamentary privilege. There is a great deal we have all thought long and hard about. I do not in any way belittle the conclusions that senators reached if they differ from mine. I am not putting down senators who do not agree with me, but I do wish I could persuade them to agree with me because I do believe that this is an important point.

The Hon. the Speaker: Unfortunately, Senator Fraser's time has expired, and she is not asking for additional time.

Senator Prud'homme: She should!

The Hon. the Speaker: Did you want to speak?

Senator Cools: I did not want to speak, but...

The Hon. the Speaker: Senator Banks.

Hon. Tommy Banks: Honourable senators, I have been listening carefully to this debate. The debate is about, in the main, perception, as I understand it, the way we will be perceived, depending on how we go about this task. I believe that there are some misapprehensions, specifically in respect of the debate on this amendment, which some members of this place have. Unless I have misunderstood, I have heard it suggested that this amendment purports to go about this task by some means that

is not statute. That is not anything that is included in this amendment, or that this amendment has something to do with defeating this bill. This amendment does not say anything about defeating this bill or about arriving at the end at which we hope to arrive by any means other than by statute. The fact that this is an amendment to a bill not only contemplates but also presumes that the means by which it seeks to change the way that we will end up with what we want will be by this proposed legislation, and, therefore, by statute.

The question that is being talked about on all sides has to do with how the Senate will be perceived, depending on how we arrive at the choice, installation, naming and enthroning of the officer in question. The argument has been that there will be greater confidence and a greater perception of independence — and I am talking about the argument against this amendment — if the appointment ends up being made by the executive, rather than by the Senate.

The following rhetorical question has been asked: Is it believed and perceived by the public that the Auditor General, for example, is independent and is held in confidence? Yes, but the corollary is this: Would the Auditor General be seen to be less or more credible or independent, or would more confidence be reposed in that office if the choice of the person in that office were made otherwise than by the executive? I do not know the answer to that question. I do not think it follows naturally that the confidence in that office or the results of the workings of that office would be any less if the appointment were made otherwise than by the executive.

My recollection of the public outcry about the question of to whom the ethics adviser in the other place and here reports is that it had to do precisely with the fact that he was appointed by the executive and, therefore, is seen to be accountable — by which I think the people read “beholden” — to the Prime Minister, to the executive.

If, as the leader has suggested, the choice of the ethics officer will be made by resolution of this chamber — so what is everybody worried about — then why do we need, on top of that, the Good Housekeeping seal of approval of somebody else, once this house has passed a resolution? Are we not masters of our own house? What lustre is brought to that selection by the laying on of the hands of the executive? If the public outcry having to do with the ethics officer who is presently in place is to be given any credence, the opposite is true. The object is to make sure that the Canadian people have faith and confidence in us. I believe that they will have more faith and confidence in the selection by a House of Parliament than they would have in a selection and a laying on of hands of an appointment by the executive.

• (2030)

It cannot be argued in the same breath, senators, that we need a greater perception of the officer not being “under the thumb” and

that this can be achieved best by that officer being appointed by the executive. It cannot be argued in the same breath that it will be the Senate who will endorse, approve and choose the officer and that some additional degree of independence is achieved by that appointment in the end being made, in effect, by the executive. One of the halves of both of those two contentions is wrong. I do not know which one, but I am convinced that this amendment not only does not seek to defeat this bill, not only does not seek to remove the eventual resolution of this question by means of a statute, but that it specifically does mean to resolve this issue by means of a statute — by means, in fact, of this statute, but in a different way.

The perception question about which we are talking is entirely subjective and not objective. It boils down to a question of whether we believe that an appointment would best be made by this house and be seen, therefore, to be more independent and less beholden to any identifiable person or persons, on the one hand, or by the executive and whether that would be seen to be less or more beholden, on the other hand. I have to believe at the moment, failing being convinced otherwise, that the former is the case.

The Hon. the Speaker: Senator Smith has a question, but I should see Senator Cools, as she has been trying to get my attention for some time.

Senator Cools: I do not mind deferring to Senator Smith. I know he always has great words of wisdom. I do not mind at all. The honourable senator can go ahead.

Hon. David P. Smith: Senator Banks, when you read the section wherein the Governor in Council shall, by commission under the Great Seal, appoint the Senate ethics officer after consultation with the leader of every recognized party in the Senate, and after approval of the appointment by resolution of the Senate, could it not be argued that, in a sense, only the executive can nominate or put forward someone, but that that person is not appointed until they have the approval of the Senate? In a sense, you have two entities sort of blessing it rather than just one. Would you not see some merit to a system like that where one, for all intents and purpose, nominates, but that nomination is subject to being approved by the Senate?

Senator Banks: Not only could that be argued, but it has been argued here, and at length. However, the question is absent the necessary response to it because we do not know, as has been said, what the means are that will be in the rules, which we all understand will be dealt with later, by which the Senate would decide to appoint this officer. The amendment simply says “The Senate shall, by resolution and with the consent of the leaders of all recognized parties in the Senate, appoint a Senate ethics counsellor.”

No one pretends that we will open up the front door and ask people to come in off the street, interview them in the Committee of the Whole and then make some selection. I presume that the rules, which we all understand will follow from this, will have in place, or at least the practice will have in place, some sort of selection committee of the Senate, or some means by which the Senate may choose to delegate to someone else. The Senate may well, according to this amendment, for example, ask that a committee of eminent persons, not of the Senate, be empanelled to make a list of nominations to us. The possibilities are endless. The means by which the nomination/selection/approval process would happen have not been determined yet. However, they are not written in water either. It says that the Senate will do that. I do not know whether that process, whatever it ends up being, would be either less or more credible than the dual process about which the honourable senator speaks.

Senator Smith: When it says "by resolution of the Senate," presumably you would have a vote in which that person or nominee got a majority of those voting. Would it not be analogous to the U.S. system when someone is nominated to the Supreme Court? Only the President of the United States can put forward the candidate, but they do not get there unless they have been sanctioned by the Senate, which in a sense is sort of a double-check, so that you have two entities rather than just one doing that. Do you not see some advantage to that?

Senator Banks: I see something meretricious in that, in my view. I will take that back, because it is pejorative. Meritorious. In the Republican system, however, we must take care not to graft the wings of an eagle on to a moose.

Senator Kroft: Senator Banks, you were going around the matter that I think is enormously important. Senator Smith seems not to have made one particular option obvious, which I think is fundamental to the amendment before us. In a chamber and on a subject in which fairness for every one must be of the very essence, is there not an absolutely irrefutable distinction between a system that calls for approval by a majority and one which calls for a full approval assured by not the consultation with but the agreement with leadership on all sides? Is that not much more to the core of fairness that we need?

Senator Banks: I think that ecumenism would be more likely in the case that you describe than otherwise.

Senator Cools: My question has been evoked by Senator Fraser's statements. I wonder if Senator Banks, perhaps, could do us the honour, because otherwise some confusion or misunderstanding will result.

My question to the Honourable Senator Banks has to do with 20.2(1), the question of the removal of the ethics officer.

Honourable senators, I have heard of addresses to the Governor General, and I have heard of addresses to Her

Majesty. An address is the mode of communication between Her Majesty and the chambers. However, proposed section 20.2 says "may be removed for cause by the Governor in Council on address of the Senate." I wonder if Senator Banks could help me on what this constitutional novelty is called an address to the Governor in Council?

Senator Banks: Given my recent arrival here, I find the whole Constitution a novelty, senator. The one thing about the clause to which you refer that bothers me is that in the event of such a removal, the person who replaces the officer having thus been removed is appointed by the executive — period, no ifs, ands, or buts — for a period of six months.

• (2040)

Again, I know we are not seeing bogeymen under the bed and not ascribing anything to anyone and perhaps I am paranoid, but a great deal of harm can be done in six months. The person who would be the replacement would be someone who would not be subject to the approval or consultation with the leaders of the recognized parties in this house under the bill as it is presently worded, and would not be appointed subject to the approval of even a majority in this place, which majority as we all know will, from time to time, swing from side to side.

The Hon. the Speaker: Senator Banks, your time has expired. Do you wish to —

Senator Banks: No.

Senator Prud'homme: May I ask Senator Banks a question?

Senator Banks: I would prefer to hear other senators speak, Your Honour.

Senator Prud'homme: No problem.

The Hon. the Speaker: Are there any senators who wish to speak?

Senator Carstairs: Question!

The Hon. the Speaker: Senator Andreychuk.

Hon. A. Raynell Andreychuk: Honourable senators, I have entered this debate several times as Deputy Chair of the Standing Committee on Rules, Procedures and the Rights of Parliament. My comments about many of the issues are on the record.

I want to speak more personally today. Ten years ago when I entered the Senate, I had come from the legal society, the judicial environment and also the foreign affairs environment. In each case there were rules by which I was bound to abide. In some cases they were codes of conduct. In some cases they were practices. In some cases they took other forms. In each case there was a measure of peer respect and evaluation of peer on peer.

In each one of these environments there had been a movement to be more transparent and to involve the Canadian public to ensure that people understood that there was some reflection on the issues of behaviour and conduct, and discussion about whether we were adhering to normally accepted practices and living up to expectations. These were done not to punish us but to encourage us to be open to new ways of working, open to criticisms and open to improvement. In other words, it was a question of professionalism and it was a question of the integrity of the system that was in dispute or question.

I am reminded that one of the first chief judges with whom I dealt said, "People will tell you to use common sense, but there is nothing common about common sense." We all come with our experiences, backgrounds and cultures, and in this diverse society we need to come together to ensure that when we work together we have some understanding that what I do does not impinge on your professionalism, your freedom and your right to perform the tasks and duties that are assigned to you.

Therefore, when I came into the Senate the first question I asked was: Where are the rules and what am I obliged to follow? I received two answers. There are the *Rules of the Senate*, there are the practices and policy, there is the Parliament of Canada Act, the Constitution; in other words, this is one of those places on which you cannot reach for one set of rules, and that I should continue to be guided by my own conscience. However, I should be reflective on all of the other legislation, policies, practices and conventions that are in place. I should also be mindful and take the advice of my peers. Many people were here before me, and their experiences are valuable.

I came armed with my own opinion of how I would operate in this place. I continue to do so. However, I have changed my ideas about many of my cherished value systems because I have seen other value systems placed before us here. I hoped that that is what would happen when we were moving to one more phase. That phase would be an ethics package, not an ethics regime. I do not know whether it is the lateness of the hour, but personally I am disappointed when I hear things like "the ruling party" and not "the governing party," "ethics regime" rather than "ethics schemes" or "rules," "power" being used and not "authority."

That is part of the problem here. We are in change. Some of the changes that we have had on Parliament Hill have been negative and the people have reacted. I feel that in the 10 years since I have been here, we have progressed. We have improved. I cannot say that other parts of the system have always done the same. There has been a movement up and down, and I think we have been caught by it, and most of it around the executive, in particular when we talk about ethics. I will not go into the details.

I had hoped that this piece of legislation, Bill C-34, would have been treated like every other piece of legislation that we have before us. We pride ourselves in scrutinizing legislation, hearing from citizens and doing a full and effective job. We were told with

the greatest sincerity, I presume, by the government that there would be an ethics package that would be the code, the rules, that it was time to codify them in some way, and that there should be an overseer of this code, some ethics officer.

We started our work — I will go through this again because I think it is important. We started our work and, as honourable senators can see from the debate in this chamber, we have not come to a consensus about what the subject-matter is, what are the principles, let alone what this legislation means. We were thwarted in the middle of it by being told that we had to submit a report. Again, I put it on the record: the opposition said that that is not the way to go, that we must finish the job. However, we were told no, we were not being given that discretion and that right to complete our task. We did not want to do it because we would be into this Catch-22 situation, in which we now find ourselves.

Yet, we yielded to the majority here, knowing one thing: They are the majority and they can impose their will, but we thought they were doing it in the best interests of the Senate. We then said all right. Our colleagues, the majority, wanted an interim report, but that interim report, even the statements found therein, are not ones with which we agreed as final. I had great difficulty with all of them. In light of the evidence we took, they seemed to be fair assumptions for the moment, but I said time and time again that I might change my mind. I was not given that right.

The next thing that happened was that nothing happened: Months went by and there was no code. There was no legislation. We then heard that there would be a bill, Bill C-34, the bill that is before us. Honourable senators, how many pieces of legislation have we heard about? A piece of legislation that we should deal with is Bill C-13, which should be passed. Bill C-250 should be passed or these should be rejected, I would say, but it should be dealt with. I could give honourable senators a whole host of pieces of valuable legislation that have died on the other side.

I defy anyone in this place to say that they do their homework anticipating bills coming, because bills get changed. I have respect for the House of Commons, but I have only so many hours in a day, so I work on the legislation that is referred to this place. I listen to my leader and to the Leader of the Government in the Senate to give me a heads-up as to what will be coming forward. I ask the chairs of my committees what will be coming, and we have steering committees to discuss what we are having. I am told Bill C-34 was in that category that, well, perhaps, maybe, we think so, it is important, but we do not have it yet, we do not have a timetable. Then we receive it and in very short order we have to deal with it.

Now, I was prepared, in generosity to the majority again, to say, "Okay, we will continue with the ethics package in the Rules Committee," but Bill C-34 is a technical, legal document, and it should go to the Standing Senate Committee on Legal and Constitutional Affairs, but that did not happen, and we are told we need it today.

• (2050)

Honourable senators, if we want to be respected here, we must demand respect from the other arms of government. If this bill were so important, we should have been told that, rather than playing games. In 2003, we are playing games. Maybe we are sitting; maybe we are not. Maybe we are proroguing; maybe we are not. If I were a betting person, I would bet that the Prime Minister is not staying in office until February. However, I do not know when he is leaving, and perhaps no one knows. Yet, surely we should have been given notice that this would happen instead of being told that we could continue our work until December 18.

It is time to stop playing games. I am very disappointed and saddened that, in 2003, we are told that this bill is important for someone's legacy. I am afraid to make it political, but I have been politicized by being made to deal with a bill with which I do not agree, with which I disagree for different reasons.

I respect what Senator Hubley said. She talked about why we need to be responsive to the public, and I agree with her. I sat on the committee that was supposed to examine the bill, but I was not given the opportunity to properly assess it.

Had I been able to finish examining the ethics package, as we were promised, or at least had I been able to finish examining the bill, perhaps colleagues would have changed my mind, but to this day I believe that the best method is to have legislation for an ethics officer with a code of conduct in that legislation. That is the only way to be transparent to the public, otherwise we are being duplicitous. We are telling the public that there will be a code of conduct and an independent ethics officer. If this debate has proved anything, it is that we do not know what we are getting. Senator Grafstein is right about that.

Senator Furey pointed out various proposed sections that bother him. I have not bothered listing all the proposed sections that bother me, because we have not heard witnesses and we have not had sufficient time to deal with this.

Just think of it: We will pass the bill, if it is the will of the majority here, and the public will say, "Hooray, we have an ethics officer and a code of conduct," but make no mistake, the next Prime Minister will bring forth a new ethics bill because this bill is nothing but smoke and mirrors. It is deception to say that we are doing something for the public in Bill C-34. We are implementing bits and pieces, and they may come back to haunt us.

I do not want to play games with the public and I do not want to be played with in this chamber. I want honesty, and I want a sophisticated, modern and democratic system. I want to be respected in this system. I want to finish an ethics package.

I yielded to Bill C-34 in the belief that we would have sufficient time to deal with it. I know that the majority of those who have studied it want a rules-based rather than a legal-based system. Had the process evolved properly, I would have had my day to

make an impassioned plea for a code of conduct and an ethics officer within the bill. I think that a lot of women in this room would probably support me on that.

I was not given that opportunity so I agreed to go with Bill C-34 if we could ensure that it is constitutionally valid, that it is not misunderstood and that it can withstand a challenge by the public, by the press, by the courts and, more importantly, by us. I do not think we have that. I think we have a bill that is simply smoke and mirrors; simply for the sake of someone being able to say, "It is my legacy."

Honourable senators, that is not why we are here. We are here to pass sound legislation, and I do not believe that Bill C-34 is sound legislation. I laud the government for what it wants, although this is not what I want. I want a code and an ethics officer; the government wants only an ethics officer. However, I am not sure that this bill gives them that, and I wanted to ensure that they got what they intended to have.

If we pass this bill with its questionable sections, how can the public have confidence that we are doing the job in which we pride ourselves, that is, improving the proposed legislation that comes from the House of Commons, ensuring that it is constitutionally valid, that it passes the Charter tests and that it is good, implementable legislation?

Honourable senators, I am not sure this is good legislation. I am certain, however, that the conduct of this bill is bad policy, bad management and not good governance. Therefore, I ask honourable senators to take the time to reflect in the best interests of the public. If we were to delay this bill and have the appropriate debate, we could all take pride in it. If prorogation occurs, it will be incumbent upon us, before Parliament reconvenes, to have framework legislation or a rules-based system that provides for an ethics officer and the codification of our rules. If we do not do that, we should not be trusted.

I thank honourable senators for their attention.

Hon. Gérald-A. Beaudoin: Honourable senators, I am of the same mind as my colleague. I have no doubt that this bill, as it is drafted, and the way in which we want to appoint the ethics commissioner, is unconstitutional. If you have a system wherein the executive, that is the Prime Minister, and the legislative branch, that is the House of Commons or the Senate, are dealing at the same time with the same matter, it is not in accordance with the Constitution. The amendment proposed by Senator Bryden contains a much better formula, as the matter would be dealt with by the legislative branch. His amendment reads:

The Senate shall, by resolution with the consent of the leaders of all recognized parties in the Senate, appoint a Senate Ethics Counsellor.

There is also another problem that I see in this measure. I cannot see how we may talk about the way a commissioner will be appointed before we have a code of ethics. Being a jurist myself, I think that the code of ethics should be drafted first.

[Translation]

We cannot have a system as new and important as the one we want to have without there being an appropriate code setting out the principles we wish to codify. There is no doubt in my mind that a code of conduct is necessary. There is no doubt in my mind that we must have one eventually, but a really significant code cannot be put together in a few weeks. That is impossible. Nowhere in the world has that ever been done. I believe we need to take the time to produce an appropriate code.

At some point, however, we must agree on an appointment policy. In my opinion, the legislative branch must be involved, not the executive. That is what democracy is all about. People must be free. People must have power, and we must establish a system that works properly. I think that, in this respect, we are verging on the illegal.

• (2100)

Second, we must also produce something that will stand up. We are talking about regulations, but perhaps the best way would be to pass a law.

As someone who joined the committee almost as a last resort, I can say that there are two opposing arguments: one for a law and one for a code of conduct. Both are valid arguments, but it is important to respect rights. It is all very well to say that the courts will interfere with what is happening in the House of Commons and the Senate, but I put my faith in the judicial branch. I know that the Supreme Court justices will respect our privileges and our rules.

The courts know that we need latitude to legislate and to ensure that all is done according to the rules. They also know that we will comply with the Charter of Rights and Freedoms. Because, if the courts cannot intervene, it will be necessary to apply some principles and they are the same principles found in the charter.

Whichever of the two systems we choose, we must accept the fact that either we go with a law or with a code and a set of rules. In either case, we must make sure that everything is constitutional and respects our values. I believe strongly in this and I think it would be impossible to pass legislation in just a few days.

Before discussing the way in which an ethics counsellor would be appointed, we must first think about drafting a code of conduct. In my opinion, it seems obvious that we are putting the cart before the horse.

In addition to drafting a code of conduct, we must also establish a system to ensure that the appointee will be independent and will defend our interests. In that respect, I think Senator Bryden's proposal is the better of the two.

Hon. Marcel Prud'homme: Honourable senators, I wanted to ask a question of Senator Banks, but he has chosen to let the senators speak rather than answering questions. I would have liked to ask him a question, rather than making a speech that I did not intend to give.

[English]

Right now, I do not know — regardless of pressure and telephone calls — how, at the end of the day, I will vote on this. However, it will be my personal decision and not the decision of anyone else in the Senate. I hope that is clear.

My question to Senator Banks would have been a simple one. Senator Banks said he floated the idea — and I think it is a good idea — of a committee of eminent people. Honourable senators, I would rather have the Prime Minister of Canada personally appoint an ethics commissioner and be responsible to all the people of Canada than have a committee of eminent people where I am not consulted — in fact, where none of us will be consulted — about who will sit on this committee of eminent people. Of that, I am positive.

Senator Smith: Hear, hear!

Senator Prud'homme: We listened to a speech last night and I made a joke with a friend, saying that I should call him "Beatitude" because he gave us so many beautiful reasons for voting for the bill. My attitude was: This "Speech from the Throne" must be very good, because the speaker is an intellectual and a good and thoughtful man, so I read his speech again. I prefer not to respond to it line by line, because people will say there is a fight among the independents. However, I do not happen to share his views.

I sat on the first committee on ethics. On this point, Senator Carstairs is absolutely right. This subject has been floating around for many years. I did not sit on the Milliken-Oliver committee, I sat on the earlier one, the Blenkarn-Stanbury committee. I would remind honourable senators that Senator Stanbury was a former President of the Liberal Party of Canada. Former Senator Stanbury is a very fine man. He was a minister of Mr. Trudeau. Mr. Blenkarn was a tough and absolutely perfect chairman. That is where I invented the word "jurisconsult". There was a big fight because they thought it was a French word. In fact, it is Latin. The debate, however, was about it being a French word. We had to agonize with that until we called in the jurisconsult from Quebec, Judge Marin. He was the jurisconsult at the National Assembly in Quebec. We then decided that it would be a jurisconsult.

If you go back 20 or 35 years ago, you will see that I often referred to the phrase, "You cannot legislate honesty." I am the person who published every section of the Criminal Code that applied to "crookery." If there are or if people think there are crooks in the Senate, let the Criminal Code deal with them, openly and publicly.

What prompted me to speak on this is because I was touched by what Senator Carstairs said. However, if I use all my energy in this debate, I may not have any left to speak on Bill S-3, and I tell Senator Poy I would do that either later this evening or tomorrow. I want to say openly that I was touched by what Senator Carstairs said. I do not deal from behind a curtain.

However, I do not know how I will vote. I may be fed up, but I know I will do my duty.

Senator Carstairs touched a subject that is very dear to my heart. She told us that she volunteers to speak to students. I have an old teacher on a contract at the moment, and he will work hundreds of hours for a limited amount of money. When I was chairman of members' services, I was known in the House of Commons as Mr. Scrooge by no less than Mr. Caccia. Every penny that we spend should be accounted for to the public. The minister does many good things for students, and she knows that I also meet with a lot of young people. Some people have said that I have spoken to no less than 50,000 young people in Canada in the last 40 years. It goes back so far that I was even a very nervous guest speaker in front of some teaching staff in Alberta, one of whom was Senator Carstairs when she was a teacher. That is going back a long time. At the outset, everyone was so nervous because they saw a "Frenchie" boy talking about the future of Canada and the monarchy. Everyone was nervous because there were bombs exploding here and there. I will brag, because no one will brag for me. I had the school in the palm of my hands at the end of the day. The minister witnessed that.

• (2110)

When Senator Carstairs said, "What am I going to say to young people?" I immediately said, "Yes, what am I going to say to people?" You see, I belong to the Trudeau school, without being a Trudeau-ist. I came under Pearson, but I am not Pearson, and I have seen all the others. I was with Senator Smith and Senator Grafstein as a Young Liberal 40 years ago.

Senator Carstairs was provoking me. What am I going to say to young people? I will say, "Do not worry now; we have a code of ethics." Boy, would they love it.

Mr. Trudeau always told us in national caucus and privately: "Be careful, there is always a smart one who may ask a second question." He would say: "Who appointed the ethics commissioner?" Of course, it has to be by Order in Council — so far, so good — but how did it come about? Well, it came about after close consultation with the leaders of parties in the Senate. I said, "Oh, my God, I can see myself sweating, having to tell the truth." Please, please!

You see I have no notes, so I say, please, can I have your indulgence for an old man, because I am going to need some energy later on tonight. I hope not.

What am I going to say? "Go, be happy, go away, now everything is going to be okay." It worries me, because someone is going to say, "Who is going to appoint?" Of course, someone has to appoint. I prefer the Prime Minister by Order in Council rather than a committee of eminent people. There is nothing that worries me more than this. In Quebec, as well as, I am sure, in other provinces, there is a kind of committee of three: one appointed by the government, one appointed by the assembly or the minister, and one appointed by the public. I have never been consulted. I am sure that no one here has ever been consulted when we appoint an eminent person.

I think I have solved that.

The second one, as I said earlier, before I was sidetracked, is close consultation and agreement by the leaders. I can see my students scratching their heads saying, "Wait a minute now, it is becoming friendly."

Third, we will write the ethics stuff, which we are told is a good sign and we should vote for it. After all, we have a kind of a veto on it, do we not, unless people are chosen by God? I do not know; maybe an independent or maybe a committee will draft the regulations.

I wish to say to Senator Carstairs that I think I have spoken to over 50,000 students in my 40 years in Parliament. I have spoken in over 300 places in Western Canada. It left me in this unbelievable corner here alone — however, by choice.

I want to make sure that I have the right answers when I get up to speak to the Commonwealth students society, here in this Senate on Monday night, because nobody wanted to show up. The Speaker asks us to speak to all kinds of national organizations. I love it, but I do not need to do it. I want to make sure that I have the right answers so that I will not be stuck by a wise kid who will start laughing, saying, "Oh, my God, it is great. At long last, I have confidence."

As you know, I will not say I am humble. I do not believe there is any aristocracy in this place. If there is to be one, I will be the one, and you will not accept it, and I will not accept anyone else.

I am tired of seeing some haughtiness. Now the problem is that I will have to wait in my office until 2 o'clock to correct what I have just said, so I will let it go.

Honourable senators, I think we should reflect. One thing is sure: We cannot legislate honesty.

For every one of us who is elected, — the Canada Elections Act states that during the election you cannot promise anything to anyone, including a job to people. You may say to your campaign workers, "If I am elected, you will be my chief of staff." That is the way it happens. Yet, if you read the Canada Elections Act, it very clearly says that you cannot even do that much. Senator Smith is more of an expert than I. He nods and he appreciates what I am saying.

I do not know. I am in total confusion. I do not know how I will vote. That is what I wanted to say. I am still open to be convinced until the very end of the day.

The Hon. the Speaker pro tempore: Are honourable senators ready for the question?

Hon. Senators: Question!

[Translation]

The Hon. the Speaker pro tempore: Are honourable senators ready for the question?

It was moved by Senator Bryden, seconded by Senator Sparrow:

That Bill C-34 be not now read a third time but that it be amended

(a) in clause 2,

(i) on page 1, by replacing lines 8 to 27 with the following:

20.1 The Senate shall, by resolution and with the consent of the leaders of all the recognized parties in the Senate, appoint a Senate Ethics Counsellor.

(ii) on page 2, by deleting lines 1 to 49,

(iii) on page 3, by deleting lines 1 to 11.

The Hon. the Speaker pro tempore: Is it your pleasure, honourable senators, to adopt the motion in amendment?

[English]

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker pro tempore: Those in favour of the motion in amendment will please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker pro tempore: Those opposed to the motion in amendment will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker pro tempore: In my opinion, the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker pro tempore: Call in the senators.

[Senator Prud'homme]

Is there an agreement?

Senator Stratton: I would like to defer the vote until tomorrow at 5:30 p.m. That is the standard procedure.

Senator Rompkey: Would it be agreeable to have a vote at 12 p.m., with a bell at 11:30 a.m.?

Senator Stratton: How about a 12:30 bell?

Senator Rompkey: How about a 12:15 bell?

Senator Stratton: What are you offering?

We all have problems. I would like to have it gone by 12:30, because then we have Royal Assent. It that dovetails nicely that way.

Senator Cools: What Royal Assent?

The Hon. the Speaker pro tempore: Is it agreed that the vote will be at 12:30 and the bells will start ringing at 12:15?

Senator Rompkey: Twelve o'clock.

The Hon. the Speaker pro tempore: Is it agreed?

Hon. Senators: Agreed.

• (2120)

CANADIAN FORCES SUPERANNUATION ACT

BILL TO AMEND—THIRD READING

Hon. Jack Wiebe moved the third reading of Bill C-37, to amend the Canadian Forces Superannuation Act and to make consequential amendments to other Acts.

He said: Honourable senators, I am pleased to have this opportunity to move third reading of Bill C-37, to amend the Canadian Forces Superannuation Act. I believe that this bill is about doing the right thing for our Canadian Forces. I want to take this opportunity to thank Senator Atkins for his comments in regard to this bill on second reading, and to thank him and all honourable senators for their support on this particular piece of proposed legislation.

An Honourable Senator: Question!

The Hon. the Speaker pro tempore: Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and bill read third time and passed.

CHILDREN OF DECEASED VETERANS EDUCATION ASSISTANCE BILL

THIRD READING

Hon. Jane Cordy moved the third reading of Bill C-50, to amend the statute law in respect of benefits for veterans and the children of deceased veterans.

She said: I will not speak very long, honourable senators. I just wish to say that I think this bill is extremely important. Whenever we can have a bill that will help the lives of veterans who have served our country, and their families, that is a positive thing.

I would also like to say that I was absolutely delighted, as I know everyone in this house was delighted, to receive the news release today from the Minister of Veterans Affairs to say that the VIP benefits would be extended to all of the eligible spouses, to receive lifetime benefits for housekeeping and for groundskeeping, so that there will not be a two-tiered delivery of benefits. I am very thankful to the Minister, and I am sure honourable senators share that with me.

The Hon. the Speaker pro tempore: Are honourable senators ready for the question?

Hon. Senators: Question!

The Hon. the Speaker pro tempore: Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and bill read third time and passed.

BILL RESPECTING THE EFFECTIVE DATE OF THE REPRESENTATION ORDER OF 2003

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Smith, P.C., seconded by the Honourable Senator Léger, for the second reading of Bill C-49, respecting the effective date of the representation order of 2003.

Hon. Jean-Claude Rivest: Honourable senators, I move the adjournment of the debate.

The Hon. the Speaker pro tempore: It is moved by the Honourable Senator Rivest, seconded by the Honourable Senator Keon, that further debate be adjourned to the next sitting of the Senate.

Will all those in favour of the motion to adjourn please say "yea"?

Hon. Senators: Yea.

The Hon. the Speaker pro tempore: Will all those opposed to the motion to adjourn please say "nay"?

Hon. Senators: Nay.

The Hon. the Speaker pro tempore: In my opinion, the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker pro tempore: Call in the senators.

There will be a one-hour bell.

• (2220)

Motion negated on the following division:

YEAS THE HONOURABLE SENATORS

Forrestall
Johnson
Keon
Kinsella
Lynch-Staunton

Rivest
Robertson
Spivak
Stratton—9

NAYS THE HONOURABLE SENATORS

Bacon
Banks
Biron
Callbeck
Carstairs
Chalifoux
Chaput
Christensen
Corbin
Cordy
Day
Downe
Fairbairn
Fraser
Furey
Gill
Grafstein
Graham
Hubley
Jaffer
Joyal

Kenny
Kroft
Léger
Losier-Cool
Maheu
Milne
Moore
Morin
Pépin
Phalen
Poy
Ringuette
Robichaud
Roche
Rompkey
Sibbeston
Smith
Sparrow
Stollery
Watt
Wiebe—42

ABSTENTIONS THE HONOURABLE SENATORS

Cools

Prud'homme—2

[Translation]

Hon. Jean-Claude Rivest: Honourable senators, I will start by expressing my profound disappointment. This was my first adjournment motion, and it was defeated. I do not feel like ever trying again.

Our opposition to Bill C-49 on electoral boundaries readjustment reflects our commitment to what electoral law should be in a democratic society. You will all agree, I think, that in a democratic society, different opinions are expressed through the various political parties. The democratic playing field must be fair, level and, above all, result from a consensus between the parties. This is one of the great benefits of democracy in general, but also parliamentary democracy.

• (2230)

Whether we are talking about electoral law, the Elections Act, the legal status of political parties, funding campaigns or political activities, I think one of the objectives of a democratic society has to be the following: all the parties, which represent the entire population but have different viewpoints, must be able, in an adult manner, to agree on the democratic process, whether in reference to parliamentary democracy or electoral democracy.

This tradition exists in Canada. It exists in each of Canada's provinces and is without a doubt one of the most eloquent illustrations of the strength and value of the quality of Canadian democracy.

I think that this bill, which is a unilateral move by the government, by a majority, breaks with tradition and calls into question our established democratic electoral practice. It is for this reason primarily that we must object to the route the government and its majority wants us to take and the procedure for adopting the new electoral boundaries that they have decided to impose on us.

It is not that the work of the commissioner in charge of readjusting electoral boundaries is being criticized — certainly not by us in any event; we recognize the value of the work that was done. It is in order to defend the value of this work that we object to the unilateral and surreptitious decision, taken in the particular interest of a group of Canadian citizens or a political party, for the benefit of the parliamentary majority in the House of Commons and the Senate, that although normally, by consensus and with the agreement of all political stakeholders, the electoral boundaries map should come into effect on August 25, 2004, this will not happen, for reasons that are undoubtedly legitimate, but nonetheless specific to the Liberal Party of Canada.

Honourable senators, how can Parliament as a whole be expected to ratify a bill that asks it to grant a "privilege", or at the very least a right, to the government majority, which is giving itself that right unilaterally?

I think that the boundaries redistribution process, which is also a very precious aspect of our democracy, was a gain. It did not just happen out of the blue. It was developed over time; I think it was Senator LeBreton, among others, who reminded us that a major breakthrough was achieved under the government of Lester B. Pearson. Pearson wanted to make sure that redistributions involving the individual interests of candidates or incumbents be

carried out in an objective fashion, taking into account the broadest interests instead of individual interests. The process was therefore intended to be independent, to offer equal opportunity to all candidates in an election — which is a basic tenet of democracy — and to be transparent.

My colleague, the Honourable Senator Nolin, spoke about how important it was that the process be transparent, and I see Senator Pépin nodding her head; she was no doubt impressed by Senator Nolin's speech. This issue should indeed be a concern of ours.

Honourable senators, how did this bill come before us this evening?

Someone somewhere has decided that the rules established by Parliament were no good, because events have taken place within a political party, namely the Liberal Party of Canada, which have precipitated things without the involvement or consent of the other parties in the democratic life of this country. Personally, I do not hesitate to say that, as far as he was concerned, the current Prime Minister of Canada, Mr. Chrétien, would have preferred that the new electoral map not become effective before August 2004, to allow him to decide for himself whether or not to go to the people to seek another term. Mr. Chrétien has said repeatedly, and rightly so, that he was going to finish his term. All the political parties, and all Canadians agreed that that was the way to go.

But someone somewhere has decided that his or her individual interests should take precedence over the wishes of the Prime Minister of Canada and the general consensus of Canadians about the electoral process, particularly the procedure prescribed in our legislation with respect to redistribution and the coming into effect of the new boundaries proposed by the independent commissioner.

The question then is who upset this consensus? Who was opposed to letting the Prime Minister of Canada do as he expected and finish his mandate and decide sometime in the fall of 2004 about his own future and the future of his party? Someone, somewhere, decided that his own interests were more important, and that Parliament and parliamentarians would obediently do as they were told, without discussion, to further the career aspirations of that individual.

Honourable senators, I do not mind individuals looking out for their own interests, which are no doubt quite legitimate and highly respectable but, in a democratic society, it is unacceptable for Parliament to obediently comply with one individual's personal schedule.

An Hon. Senator: What is the name of this individual?

Senator Rivest: I do not know; a number of newspapers indicate that this individual will be identified next week. I heard about a Ms. Copps. I do not know if she is the individual in question, but I do not want to personalize this debate any more than it already is. I heard that she could become leader of the Liberal Party of Canada, and that she would prefer to call an early election, after a convention in Toronto, apparently. This is what I gathered from glancing at the newspapers.

But if this woman wanted to become Prime Minister of Canada, she could perfectly well have respected the timeline of the government's mandate, as well as the wishes of the current Prime Minister of Canada. As a result, I do not want to say that Ms. Copps is the individual in question; perhaps it is someone else, I do not know yet. No doubt, we will find out who it is in short order.

No matter who it is, honourable senators, the reason we oppose this bill is essentially because it creates a precedent. I believe the same thing was tried in 1996.

• (2240)

Fortunately, thanks to the vigilance of the opposition, we managed to get the government to see our point and back down. Despite the temptation, the government did not want to be seen as being opposed to electoral law, which requires all political parties to give consent on something like this.

Once again, I do not want to question the motives of the present Prime Minister of Canada, for he was fully aware of the situation and wanted the electoral map to take effect in August of 2004. He was absolutely right in this, moreover. There is no urgency. Canadians have not been demanding any changes to the timetable, nor has the present Prime Minister. He has always said he wanted to complete his mandate. Canadians elected Prime Minister Jean Chrétien for a four-year mandate. Someone thought otherwise, which created chaos among the other political parties and led to this situation, unjustified as it is.

In closing, I will reiterate, on behalf of the Opposition in the Senate, our strong insistence that any decisions relating to electoral law continue to respect the sacred principle of electoral democracy and parliamentary democracy. Nothing is to be done without all-party consent. In short, the rules of democracy are not to be changed unless all citizens in a society agree, to ensure that the rules of democracy, the electoral rules, the rules on electoral funding, the election procedures and the rules on electoral boundaries are the result of consensus and a transparent and impartial process. This is exactly what we have achieved.

The commissioner has done his job. He listened to representations from all Canadians. He reached a decision independent of particular interests. However, someone else decided to put his own interests first — Mr. Martin, if memory

serves correctly. He has specific electoral interests and is trying, with nothing to back him up except his parliamentary majority, to impose his own agenda on all the people of Canada.

It is my opinion that no Parliament can accept such a procedure. This is the reason for our strong objections to this bill.

[English]

The Hon. the Speaker: Senator Robertson will move to adjourn the debate, but some senators have questions. Unfortunately Senator Rivest's time has expired.

Senator Rivest: I would only request leave to continue for good questions.

The Hon. the Speaker: Is it a good question, Senator Smith?

Hon. David P. Smith: The honourable senator said several times, perhaps rhetorically, that someone, somewhere, decided that what is in this bill should happen. Who did that? He referred to matters like this being raised with all parties and being dealt with by consensus. Was the honourable senator aware that, when this matter was voted on at third reading in the House, his colleagues from the Progressive Conservative party supported it, with the exception of one member?

Senator Rivest: Honourable senators, I am aware that there is the House of Commons; I am also aware that there is a Senate.

Some Hon. Senators: Hear, hear!

Senator Rivest: This is a decision that we have to take as senators, as free senators.

Senator Smith: My question was: Was the honourable senator aware that his caucus colleagues in the Commons supported this bill, as did four of the five parties, save and except the Bloc? Did he discuss with them why they saw fit to join with four of the parties to pass this bill that affects the Commons?

Senator Rivest: I have a long tradition of being a dissident in my life.

[Translation]

Hon. George Furey: Where did you get your information that it was not the Prime Minister who decided to change the electoral boundaries?

Senator Rivest: The Prime Minister was not the one who decided to change the electoral boundaries. The Elections Act provides that, after an election, a commissioner must be appointed to see that changes in electoral boundaries are carried out according to a schedule contained in the act and known to everyone. It was expected that the new electoral boundaries would come into force on August 25, 2004. Someone decided that the change should happen earlier than the appointed date in order to serve particular electoral interests, perhaps those of Mr. Martin or Ms. Copps — although for Ms. Copps that appears not to be the case.

[English]

Hon. Tommy Banks: I have a good question for Senator Rivest.

I am a Western senator from Alberta. Even after the proposed redistribution, the average number of people in each constituency in Alberta will be approaching 107,000. In British Columbia, the average will be slightly higher than that. My constituents are anxious that that be changed.

It is not beyond the realm of possibility that Ms. Copps might call an election in, let us say, April or May. Do I take it that it would meet with the honourable senator's approval if I explained to the voters of Alberta that the Progressive Conservative Party objected to their having two additional seats in the coming election?

Some Hon. Senators: Hear, hear!

Senator Rivest: I just said that I would take only "good questions."

The Hon. the Speaker: I think, Senator Prud'homme, that Senator Rivest is finished with questions. Do you want to try?

Hon. Marcel Prud'homme: Honourable senators, I hope my question for Senator Rivest is considered a good one.

[Translation]

Honourable senators, as you know, the bill before us applies to a single election. This is somewhat troubling. The drafters of this bill should have asked for a permanent amendment. The Chief Electoral Officer will tell us, when he appears as a witness, that in his next report he will recommend that this one-year period be reduced, given what computerized systems can now do.

I do not understand why this bill would apply to a single election. It would be insensitive of a prime minister to call an election in April if he were not obliged to do so. According to the old boundaries, he need only wait until August.

[English]

I will continue in English for those who may not understand. It is true that Alberta is short-changed. In fact, the electoral map short-changes British Columbia and Alberta. That is because Saskatchewan should have only 10 seats and Manitoba should have only 11. Everybody points the finger at Quebec, but Quebec is not responsible because the Atlantic provinces should have 21 seats, but they have 30. They have 30 senators.

• (2250)

If you were to see a electoral map by population, you would see that two provinces in Western Canada have too many seats and two provinces are short-changed. Quebec has almost the correct number of seat is, less two, but you would see that the Atlantic provinces have —

[Translation]

Would the honourable senator have been more comfortable if the amendment had been permanent rather than exceptional, as Senator Nolin said, and only for this election?

Senator Rivest: Senator Prud'homme is absolutely right. This proves the truly specific nature of this legislative intervention. It is also a departure from established electoral practice and the way electoral law should be applied. We are being asked to pass a bill whose sole purpose is to address a specific political situation.

This is a precedent. Other political parties will be faced with other specific political situations. One could wonder whether Parliament will adopt bills to suit the specific interests of a particular political party. Right now, we can assume that the Liberal Party of Canada has an interest because it surreptitiously decided to change prime ministers.

[English]

Hon. Brenda M. Robertson: I move the adjournment of the debate.

The Hon. the Speaker: It is moved by the Honourable Senator Robertson, seconded by the Honourable Senator Forrestall, that further debate be adjourned until the next sitting of the Senate.

Will those in favour of the motion please say "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Those opposed to the motion will please say "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "yeas" have it.

Motion agreed to and debate adjourned, on division.

ASSISTED HUMAN REPRODUCTION BILL

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Morin, seconded by the Honourable Senator Gauthier, for the second reading of Bill C-13, respecting assisted human reproduction.

Hon. Wilbert J. Keon: Honourable senators, I rise to complete my remarks on Bill C-13, the assisted human reproduction act. You will recall on Tuesday last, I spoke to this bill and outlined the need for the legislation, including the historical evolution. I spoke to the central purpose of the bill and to the principles involved, and, indeed, all of these remarks were very positive as they related to the bill.

I also spoke to the prohibitions in clause 5 and paragraphs (a) to (j), again, all of which are necessary and positive.

I began to move on to clause 6 and the clock stopped me.

I will speak briefly about clause 6, which states:

No person shall pay consideration to a female person to be a surrogate mother, offer to pay such consideration or advertise that it will be paid.

There is a problem with this, honourable senators, because paid surrogacy is not permissible under the bill. However, the bill goes on to allow for payment for certain receipted expenses. An amendment added at report stage allows a surrogate mother to be compensated for lost employment income, if she is unable to continue working during pregnancy for health reasons.

There is a contradiction that needs to be resolved, and this amendment also stands in direct contrast to the proposals made by the Commons Standing Committee on Health in 2001. Its report recommended a ban on any financial compensation to surrogate mothers and approved surrogacy under only purely altruistic circumstances. That stand was made on the ground that paid surrogacy commodifies the reproductive capabilities of women by saying that it is illegal. By allowing payment in certain circumstances, the bill now before us does not take a clear position on this matter either way and opens the door for compensation of surrogate mothers. This will have to be clarified along the way, I believe, in committee or elsewhere.

I now turn to stem cell research, which is a truly controversial part of this bill. Stem cell research advocates claim this methodology has the potential to revolutionize the management of disease. There is no doubt about that. Disorders now being studied in this regard include diabetes, heart disease, Parkinson's disease, liver diseases and arthritis. The list goes on. It is perceived as the light at the end of the tunnel.

Embryonic stem cell research would be permitted by the agency as long as they are surplus embryos created in in vitro fertilization. On this same issue, just because an embryo is considered surplus does not negate the fact that it was originally made for reproductive, not research purposes. There are some who believe that embryo adoption by infertile couples could deal with the issue of surplus embryos. Of course, many would not feel comfortable allowing other people to raise their genetic children. However, Canadian families should at least have the option to donate their surplus embryos to create other families.

That is perhaps another matter that must be examined in committee. One also has to ask the why so many surplus embryos are created in the first place.

The second criterion for embryonic stem cell research to be permitted is that the owners have given written consent and

scientists have proved that the research is necessary. This also is an issue that requires further clarification. Just how necessary is not stated, and this is very vague, as outlined in the bill.

Some favour embryonic stem cells since they are considered easier to reproduce and manipulate in the laboratory, and adult stem cells are not. There appear to be no reasonable objections to adult stem cell research, but it certainly is not as fruitful at this point in time.

"Embryo," as defined in this bill, means a human organism during the first 56 days of its development following fertilization or creation, excluding any time during which its development has been suspended, and includes any cell derived through such an organism that is used for the purpose of creating a human being.

Going back to clause 5(d), it states that:

No person shall knowingly

maintain an embryo outside the body of a female person after the fourteenth day of its development following fertilization or creation, excluding any time during which its development has been suspended.

Now herein lies the dilemma, because many people feel that a 14-day embryo is a human being. I have received large amounts of correspondence on this issue. More came in today from some religious orders, et cetera.

However, it is safe to say there is really no agreement on this matter.

In extracting the stem cells needed for research, the embryo is destroyed. For this reason, some people equate stem cell research with abortion. Alternatively, some see this type of research as a means of providing a cure for any number of diseases or serious injuries. Canada has been leading in stem cell research, with the stem cell network formed in 2001, a federal government network of excellence involving more than 60 top scientists across the country. These scientists feel strongly that embryonic stem cell research is necessary. They are also concerned that, if it is not allowed, they will fall far behind other research being done in various parts of the world, such as Britain, where the laws are liberal, and the United States, where embryonic stem cell research can be done in private laboratories. In the United States, embryonic stem cell research is not funded by NIH, the National Institutes of Health. You are not allowed to do it in a government-funded lab, but you are allowed to do it in a private lab. American scientists had an opportunity to do it because of those circumstances.

• (2300)

Others explain that the evidence justifies the use of adult stem cells only at this point in time and that there is just not enough known about the whole field to take that giant leap into sacrificing embryos or stem cells. We have a major difference of opinion here.

Turning now to the governing agency, in principle there is tremendous support for this governing agency. I believe that everyone feels that it is necessary. The objectives of the agency are to protect and promote the health, safety and the human dignity and human rights of Canadians and to foster the application of ethical principles in relation to assisted human reproduction, another matter to which the act applies.

The assisted human reproduction agency of Canada would be established, something first proposed in Patricia Baird's report following the royal commission. The agency would be separate from Health Canada but would report directly to the Minister of Health, advising on related issues. It would provide licences to clinics and researchers conducting activities as regulated under the legislation.

There are many relevant issues here that will have to be considered in committee. For example, can this agency be truly independent if it directly reports to the minister? Also, should the agency be required to have a certain number of women to sit on the board, as women are most directly affected by the assisted reproduction techniques? What is the agency's relationship to the Canadian Institutes of Health Research? Are stem cell research guidelines in the review process? There is also concern about the privacy issue relating to the role of the agency.

While there are some questions about the agency, I personally do not have serious problems with this agency. I must say the correspondence is generally supportive of it and there definitely is a need for it.

I will summarize and paraphrase, because the hour is late. The next major issue is the privacy issue. There will be a tremendous amount of data collected by the people involved in this business. It is going into a data bank, and people are deeply concerned about the integrity of that data bank. This has really not been carefully defined at this point in time. It needs a little further definition and clarification, but I do believe it is possible. It is also possible to put firewalls into data banks that can protect people.

While there is no consensus about the merits of every part of this bill, we have a responsibility to understand it and how Canadians will be affected and protected by it on a short and long-term basis. Having done that, we can act with conviction. Consequently, I look forward to gaining a fuller knowledge about this matter in committee and from some of the other speeches that will be heard along the way.

I must say that, at the outset, there is a tremendous wish on the part of the scientific community to have this bill passed. The word got out that I had some reservations about it, and I have been inundated with mail and telephone calls, and so forth, asking me to get on with this because it has been in the pipe for 10 years. People are deeply concerned that there are components of this bill that should have been passed a long time ago.

I recall an analogy to the abortion bill that came here when I first came into the Senate. It just seemed that there was too much in the bill. This one seems the same. There are things that everybody wants included. If we had had two or three bills, it would seem a lot simpler than just one.

Hon. Mira Spivak: Honourable senators, this is the first bill on assisted human reproduction to reach us, but it is not the first time that this chamber has debated the need for legislation. Fourteen years ago, the government of Brian Mulroney created the Royal Commission on New Reproductive Technologies. The commission was charged with investigating technologies that existed at the time and was considering what could be available in the future. Most important, the commission's task was to recommend a Canadian course of action.

The royal commission spent four years and some \$28 million charting the science and medicine available to infertile couples. It looked at the social, ethical, health, research and legal implications of new technologies and it synthesized the values of Canadians in what is often portrayed as a moral and ethical minefield. Its report, "Proceed with Caution," is germane to this debate. However, that does not mean that the legislation should be 10 years in the making.

I am disappointed that this bill comes so late in the session. I assume we will not be able to go through the process that it really needs to go through, and the bill may die.

The commission spelled out activities that were, and are, clearly unacceptable to Canadians: sex selection of babies for non-medical reasons or turning human eggs or sperm into commodities by profiting from their sale. To those unacceptable practices, we can now add human cloning and the creation of human-animal hybrids that Canadians have clearly found repugnant.

The royal commission advised the government to create a national reproductive technologies commission to licence and regulate research, sperm banks, infertility clinics and other services. It said specifically that there is a need for urgent action in a rapidly evolving technological field, for comprehensiveness and similarity of approach across the country, and for public accountability in managing the technologies.

As Patricia Baird, former chair of the royal commission, wrote two years later:

Not to do anything is a policy; it will mean the market will drive the availability of various technologies. Once the market has established itself, it will be a very difficult situation to retrieve.

Ten years down the road, we are seeing evidence of that.

This chamber also felt a sense of urgency. Some of you will recall the debate we had five years ago on a motion urging the government to create the national body that the royal commission recommended. We approved the motion unanimously in June of 1998.

I am pleased that at last we have a bill that would create, if not precisely that national commission that the Baird commission proposed, at least some form of national agency. We also have a bill that would ban human cloning, sex selection and payment for sperm, eggs and surrogate mothers. It is welcome legislation, and it is long overdue.

Having said that, in several respects it is not the bill that flows naturally or logically from the four years of work of the royal commission, nor is it the bill that a committee in the other place recommended after hearing from more than 200 witnesses and receiving more than 400 written submissions. As happens all too often, the committee did its work and adopted amendments to improve the bill, only to see them reversed at report stage.

The bill before us does not follow the advice of the House of Commons standing committee nor that of the royal commission on the composition of the all-important new agency. The royal commission recommended a 12-member board and, recognizing that it is women's bodies that are most often subjected to invasive procedures, proposed that women compose a substantial portion of the board members — normally at least half. The standing committee proposed a 50 per cent minimum, but the bill before us is silent on that point.

• (2310)

The standing committee recommended strong conflict of interest clauses to ensure that the public interest rather than the for-profit interests dominate more decisions. The bill we have contains a watered-down version. Licensees and shareholders of for-profit clinics cannot be appointed, but industries that supply products and services can have their people on the board.

In the very delicate matter of donor identity, the bill does retain a committee amendment. It allows the new agency to give a doctor the identity of a sperm or egg donor to help the doctor deal with a medical problem. However, it does not give the same rights of disclosure to people conceived through assisted technologies. It attempts a balancing act. Is the balance right? I hope this is one area our committee will investigate.

No doubt, our committee will also confront the ethical, moral, and practical dilemmas posed by the various clauses that would allow the use of embryos for training in medical research. Some Canadians, as Senator Keon has suggested, are deeply troubled by the use of embryos for stem cell research. Others believe the research offers hope for people with chronic diseases. This bill

puts constraints on the agency's ability to licence that research. Are they sufficient? The standing committee is an excellent place for a review of that aspect of the bill.

I would note, however, that at the United Nations, an international coalition of at least 66 scientific organizations, including the U.S. National Academy of Sciences, has endorsed a ban on human reproductive cloning, but has urged the United Nations and national legislatures to permit therapeutic cloning, which is basically embryonic stem cell research as I understand it, citing its considerable potential for scientific research.

While the Senate committee does its work, there are two important things to remember. In the absence of any control research on human embryos is being conducted in fertility clinics. In fact, according to news reports, it is common practice in clinics. In their efforts to improve success rates there is also a grandfather clause in this bill. It frankly encourages research today by exempting anything that is done before the regulations are enacted.

Much of this bill requires a great deal of regulation, as do so many other bills brought before us in recent years. As legislators, we are increasingly asked to approve empty shells and to trust public servants and cabinet to fill them appropriately. I have a great deal of difficulty with that trend.

This bill proposes something of a compromise. It requires that regulations, with some exceptions, be laid before both Houses. It makes clear that committees may review these regulations, the minister must take into account the report of the committees, and if he or she does not incorporate a committee's recommendation a statement of reasons must be given. This is a good start in reducing the democratic deficit that has grown wide in Parliament.

Still, there are two lacunae in this bill. First, nowhere does the bill incorporate the precautionary principle that common sense tells us should apply in this field and, second, it virtually omits an area of research, public information and education that the royal commission considered vital. I refer to infertility prevention. Ten years ago the commission conducted the first data collection and research into the prevalence of infertility. It reported that 7 per cent of Canadian couples of reproductive age were infertile.

This year, in the other place, various new figures were presented. The parliamentary secretary to the health minister suggested that one in eight Canadian couples now has to deal with infertility and the rate is rising. It is a troubling statistic — from 7 per cent a decade ago to 12.5 per cent today. When asked for supporting evidence, the government does not readily have it. It has no recent studies. It relies on some provincial data and extrapolation of rates in other countries. The one-in-eight figure is the "generally accepted" one. Accepted perhaps, but is it acceptable to the next generation of young people who hold parenthood as one of their fondest expectations?

Are today's estimates accurate? If so, what is causing this rise in infertility? The royal commission identified several preventable causes of infertility: sexually transmitted diseases, maternal age, smoking and exposure to harmful agents in the workplace and in the environment.

In the last decade, scientists have learned a great deal about chemicals that can severely affect reproductive systems and reproductive ability — the so-called endocrine disruptors. These chemicals are everywhere — in our homes, our workplaces and in our waterways. We are not educating people on how to limit their exposure, nor are we taking regulatory action to remove them from our environment.

Ten years ago, the royal commission made infertility prevention a priority. It called for a national prevention strategy and recommended that a subcommittee of the national body be specifically assigned to address it through research, education and regulation. The bill before us only glances at that important issue. As an afterthought, it requires the new agency to provide information to the public on the act, its regulations and "risk factors associated with infertility." That is far less than the royal commissioners had in mind.

Ten years of leaving it to the marketplace has had the predictable outcome. Infertility prevention is in the public interest. Infertility treatment is profitable. Our resources have been directed to the profit centres. Personally, I would like to see a far stronger prevention role for the new agency through this bill.

Ten years after the royal commission report there is understandable concern, even anxiety, that unless we quickly pass this bill Canada will face more years of a freewheeling unregulated marketplace. It is hard to disagree with Patricia Baird, former head of the royal commission, who a few months ago wrote:

It is much more important to get regulatory oversight established than to delay over particular specifics.

As the clock winds down in the other place, we could be tempted to think we have a Hobson's choice. However, when asked about this legislation, the prime-minister-in-waiting publicly said he supports it and is prepared to pursue it in the future if necessary.

With that assurance, I hope this chamber will take the time it needs to apply its wisdom to this bill. I hope our committee will hear from many witnesses. I look forward to following the deliberations and I hope this chamber can address the bill's remaining deficiencies in an effective manner.

Hon. Douglas Roche: I rise to speak on Bill C-13, which provides for regulation of the practice of assisted human

reproduction and related research. This bill aims to fulfil a long-standing regulatory and legal vacuum to govern activity in a rapidly changing sector of health research and practice, and to protect the interests of Canadians who use assisted human reproduction services.

The principles set out in clause 2 of the bill are indicative of these laudatory intentions. The health and well-being of children born through this system are to be given priority. The benefits of technology and research are not to override human rights and dignity. The interests of women must be protected in recognition of the increased impact these regulations will have on them, and human individuality and diversity must be preserved. I believe these principles enjoy the support of the majority of Canadians.

• (2320)

The remaining 76 clauses of the bill set out to give substance to these principles. Substantial prohibitions are applied to human cloning and the creation of animal-human hybrids; a national agency is created to license and regulate the assisted human reproduction industry to ensure quality control and replace a system of voluntary adherence to ethical standards with an enforceable code of conduct; restrictions are enacted on a number of controlled practices, including the use of embryos for research purposes; and children born using assistive human reproductive procedures are given access to the medical histories of their biological parents. All this is to the good.

Essentially, this bill attempts to apply Canadian values to the shifting contours of modern technology, which is evolving today at an unprecedented pace.

One of the new frontiers in health research, and an area where the potential rewards of research must be balanced by ethical concerns, is stem cells. These cells have the unique capacity to duplicate the functions of a variety of different body cell types and could revolutionize the treatment of chronic diseases such as cancer and diabetes. Research has proceeded internationally on stem cells drawn from two sources: adults and embryos. Some claim that research must continue on both fronts to maximize results. However, the evidence indicates that adult stem cells are more promising than their embryonic counterparts. Studies in Australia and Germany confirmed in October of this year preliminary success in using adult stem cells to fight heart disease. Recent research by Dr. Catherine Verfaillie at the University of Minnesota, showing that adult stem cells are capable of adapting to every type of cell in the body, dramatically expands the potential uses of these cells.

Extensive research on embryonic stem cells, which in the U.K. has resulted in the killing of 40,000 embryos, has yet to yield similar results. Moreover, since they can be harvested from the patients themselves, adult stem cells avoid the immune rejection problems associated with embryonic stem cells.

Aside from the scientific limitations, embryonic stem cell research has serious ethical implications for many Canadians. This is because harvesting embryonic stem cells unavoidably results in the death of the embryo, which is recognized by many as the end of a human life.

It is interesting to note that the bill itself defines an embryo as a "human organism." Furthermore, it is important to recognize that the treatment of embryos in this instance differs significantly from the considerations involved in the controversial issue of abortion. Instead of compromising the rights of the unborn in deference to their mothers, as does abortion, embryonic research introduces a third entity to this scenario — the researcher. According to this bill, barring interference from the donor, the rights of researchers to experiment also takes precedence over the right of the embryo to live.

Proponents of this bill argue that these so-called surplus embryos created initially for reproductive purposes would eventually be destroyed in any case and that it only makes sense to derive some research value from their brief existence. However, given the current national shortage of embryos fit for research, there will be a strong incentive to create more embryos than necessary when conducting in vitro fertilization in order to have the surplus available for research. Instead of providing protection to unborn Canadians, this bill further devalues their lives by subjugating their right to live to the rights of scientists to conduct research which, in light of the promising alternative of adult stem cell research, is unnecessary.

A Leger poll of 1,500 Canadians conducted in October of this year found that only 21 per cent believe the use of embryos for stem cell research is acceptable, while 33 per cent said it is unacceptable and 37 per cent preferred that alternative sources of stem cells be used.

A clear majority — 70 per cent — of Canadians prefer that stem cells not be taken from embryos. While other polls have given different results, it should be noted that this poll made specific mention of the harm done to embryos from harvesting stem cells and the existence of an alternative source. When in possession of these facts, Canadians clearly rejected embryonic stem cell research.

Proponents of the bill argue that something is better than nothing, that establishing some guidelines is better than having none at all. I agree, but this argument ignores a third option — better guidelines. What prevents us from prohibiting the use of embryonic stem cells for research? Even the bill's proponents admit that there are currently only about 10 embryos in the entire country that meet research standards. Meanwhile, the research potential of adult stem cells demands our undivided attention.

Eliminating the use of embryonic stem cells also removes the divisive ethical issues surrounding the status of embryos as human

beings from the equation. We can avoid putting Canadians who suffer from chronic disease in the difficult position of choosing between valuable treatments and upholding personal moral principles. Finally, Canadians themselves clearly support the use of alternative sources. If the government is interested in passing this bill and minimizing opposition to it, an amendment prohibiting embryonic stem cell research is one improvement that would go a long way.

While the lack of protection for embryos is the most fundamental concern I have with this bill, another serious issue that merits consideration is the lack of appropriate conflict of interest provisions for the proposed assisted human reproduction agency. This agency would be charged with issuing licences to medical practitioners involved in research and service delivery related to assisted reproduction. The agency would also be obliged to fill in the gaps in the regulations outlined in the bill. Since the bill defers to the regulations for details in no less than 28 clauses, the role of the agency will be an important one. In spite of this, the conflict of interest guidelines currently permit representatives of biotech and pharmaceutical firms with a clear financial interest in the conduct of this research and the regulation of it to sit on the board. Essentially, these firms are being invited to regulate themselves. This is a recipe for disaster.

We are all aware of the litany of allegations currently in circulation related to conflicts of interests involving public figures. Even if such allegations are untrue, the mere fact that they are advanced undermines public trust in the institutions of governance. In this case, the appearance of conflict of interest could damage the trust that assisted human reproduction clients place in the very institution charged with protecting their safety and interests.

A realistic survey of Bill C-13 must consider both the strengths of the bill in providing badly needed regulation to the AHR industry and its weaknesses in failing to make these regulations effective and appropriate.

The Canadian Conference of Catholic Bishops captures the ambivalence felt by many Canadians toward this bill when it states that, "while there is much that is positive in the bill, it is also deeply flawed." On the other hand, proponents of the bill, including the 65 health care academics and ethicists who signed a recent open letter on Bill C-13, cite the urgent need for regulation in the field and note that, "given political realities and history, if we do not get this legislation now, we won't get any for a very long time" if ever.

Let us not forget that often the political reality is what we make it. In focusing on the alleged dichotomy between this bill and no bill, we risk ignoring a third and much preferred alternative — a better bill. Given the importance of this bill, not only to consumers of AHR services but to all Canadians, every effort should be made to construct legislation that is effective and approaches consensus as closely as possible.

However, extensive efforts to improve this bill over the last few years have met with minimal success. In every case, the government has refused to incorporate substantive changes. It refused to issue a comprehensive response to the work done by the House Health Committee on the draft legislation, and it overturned all three of the substantive amendments the committee made to Bill C-13.

• (2330)

The government also ignored numerous requests to split this bill, separating human cloning and AHR legislation from the more controversial aspects related to embryonic stem cell research. If the government was primarily interested in passing urgently needed legislation to protect AHR consumers as quickly as possible, it could have bypassed significant opposition to the bill by separating these elements. Instead, the government has opted to push the bill ahead, over the objections of the health committee and many of its own caucus members.

The absence of due consideration of the bill's potential weaknesses makes it essential that the Senate exercise its role as the chamber of sober second thought with particular care in this instance. If the bill is unclear, or has unforeseen implications, the government does a disservice to the very people it is trying to protect — those seeking assistance with reproduction. That is why, honourable senators, it is of fundamental importance that this bill receive a thorough analysis in committee, which addresses all points of view and considers all aspects of what is a very complicated piece of legislation.

While regulation in this area is urgently needed, the subject matter of this bill is too important to push through a set of ill-considered guidelines. Deeply held ethical principles are at stake.

Hon. Yves Morin: Honourable senators, first, I would like to congratulate Senator Roche. I think that was a very thorough study. I have a question for him. I realize and I respect his opinion that he is opposed to research of embryos; many Canadians are. However, the fact remains that research on embryos has now been conducted for more than 20 years in fertility clinics. In fact, in vitro fertilization is absolutely impossible to perform without research being done on human embryos at an early date. It would be extremely difficult to divide the bill between embryo protection and reproductive technology regulations because embryos are used for teaching, for quality control and for research. If this were not permitted, we would have to close fertility clinics because, as I stated, in vitro fertilization cannot be performed without research.

The other issue is that stem cell research, for some reason, has taken over. Up to now, no embryo has been used for stem cell research. Stem cell research will be conducted mainly on existing lines that have been created outside the country. I would like to point out that virtually all of the 65 researchers of the Canadian stem cell network, without exception, feel that both embryonic and adult stem cells must be used.

[Senator Roche]

I realize that for some Canadians — and, as I said, I completely respect that — embryonic research is not acceptable, even at a very early stage when cells are not differentiated, when it has less than 150 cells. I respect that. However, for some reason — and I know why — it is easier to hit on the mad scientists in the lab, you know, the Frankenstein doing stem cell research, than it is to hit and close fertility clinics. The opponents of embryo research are surprisingly silent on the subject, and I know why. As has been stated, 15 per cent or one in eight women are infertile and, with reason, want to have access to fertility clinics. If we really were opposed to embryonic research, we would have to close down all the fertility clinics in Canada, which is absolutely unacceptable.

The Hon. the Speaker: Honourable senators, unfortunately there is an expiration of Senator Roche's time.

Senator Roche: Might I have leave to continue, honourable senators?

The Hon. the Speaker: Is leave granted, honourable senators?

Hon. Senators: Agreed.

Senator Roche: I would like to make it clear that I do not want to hog the time at this hour, but I will certainly respond to Senator Morin, and I begin by paying my respects to him as an eminent physician.

I am afraid we just do not agree on the necessity of embryonic stem cell research. As a matter of fact, in my speech — and this is a truncated version I gave of my speech — I tried to set out evidence that adult stem cell research is more promising for the cure of degenerative diseases than embryonic stem cell research. Second, it is a fact that the embryo is recognized as a human organism, a human being. I think that if we are to countenance research on even putative human beings, it creates immense ethical problems.

Having said all that, I recognize that the committee ought to thoroughly explore these issues in order that the best bill possible can come forward. I recognize that while the bill is flawed, in my view, it is presented by some as being the best obtainable. I think it can be improved to reduce the ethical lapse that is presently in the bill.

The Hon. the Speaker: Did you want to adjourn, Senator Kinsella, or to speak? Senator Corbin has withdrawn his question.

Hon. Noël Kinsella (Deputy Leader of the Opposition): Honourable senators, I want to participate in the debate at second reading. Therefore, I will move the adjournment of the debate. It is too late and I am very tired, but I will speak very soon. I think the bill should move off to committee.

On motion of Senator Kinsella, debate adjourned.

[Translation]

SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

NOTICE OF MOTION TO AUTHORIZE THE COMMITTEE TO STUDY DOCUMENTS PURSUANT TO THE CANADA NATIONAL PARKS ACT

Leave having been given to revert to Government Notices of Motions:

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I give notice that at the next sitting of the Senate, I shall move:

That the Standing Senate Committee on Social Affairs, Science and Technology be authorized to examine and report upon the documents entitled: "Banff Community Plan"; "Field Community Plan, Yoho National Park, July 1999"; "Jasper Community Land Use Plan, Jasper National Park of Canada, 2001"; "Lake Louise, Banff National Park of Canada, Community Plan, June 2001"; "Wasagaming Community Plan"; "Waterton Lakes National Park: 2000 Waterton Community Plan"; "Waskesiu Community Plan" and "Order Amending Schedule 4 to the Canada National Parks Act", tabled in the Senate on November 6, 2003 (Sessional Paper No. 2/37-795), pursuant to the Canada National Parks Act, S.C. 2000, c. 32, sbs. 34(1).

PRIVACY COMMISSIONER

NOTICE OF MOTION TO APPROVE APPOINTMENT

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I give notice that at the next sitting of the Senate, I shall move:

That in accordance with Section 53(1) of the Act to extend the present laws of Canada that protect the privacy of individuals and that provide individuals with a right of access to personal information about themselves, Chapter P-21 of the Revised Statutes of Canada 1985, the Senate approve the appointment of Jennifer Stoddart of Westmount, Quebec, as Privacy Commissioner for a term of seven years.

[English]

• (2340)

Hon. Marcel Prud'homme: Honourable senators, it is good for the deputy leader to have asked for permission. When permission is given, it is like a blank cheque.

Senator Carstairs: It is a notice.

Senator Prud'homme: I know it is only notice. We could have been given something on which to reflect. We could have refused permission. I was curious because I thought it was something

new. I find it unbelievable that, at this late hour, we are being asked for our permission to revert to government business. The surprise is that it is so a matter of substance. Could this not have been done a little bit earlier so that we could decide whether to give consent? We are giving consent to something we do not know about.

I know it is not exactly a point of order but, for the future, if there are to be other, similar surprises, perhaps they could be raised during the daytime, when people may give the matter some thought. To give notice at this hour to deal with the Privacy Commissioner's term of another seven years, is not proper. However, I am sure Senator Kinsella and I will support that. We will have her appear before the Senate. However, this time we will be more careful. We may vote again, or we may not.

I want to register my surprise, honourable senators, that, at this late hour, near the end of a very long week, we are faced with this notice. My comments are on the record, and I may use it, if this situation arises again. We will, undoubtedly, have the usual request of the Honourable Senator Kinsella to have that witness appear before the Committee of the Whole.

PUBLIC SAFETY BILL, 2002

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C., for the second reading of Bill C-17, to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, as promised, I am ready to speak.

I have made sure that my remarks do not exceed the time allotted me, which is unlimited. I am willing to make those now, but in view of the hour, honourable senators may prefer that I speak tomorrow instead. I am in their hands.

Very well, I will carry on. I am always in a cooperative mood when it comes to working with the government side.

Senator Stratton: Even I cannot keep a straight face on that one.

Senator Lynch-Staunton: This Bill C-17, as the Leader of the Government has already pointed out, amends 23 acts of Parliament and introduces a new one. I will not get into the debate today about the long title of this bill — my point about titles of bills has been made over the past week — but I will say that Bill C-17 is a huge bill, affecting many facets of the lives of Canadians that are once again not reflected in this long title.

The Senate should take considerable time to examine this bill to ensure that the privacy rights of Canadians are balanced with the security needs of the country.

This is the third attempt of the government to introduce this proposed legislation. Despite changes to the bill each time it has been reintroduced, there remains considerable concern about privacy and about the powers that are conferred upon ministers to act arbitrarily, with little parliamentary oversight.

I will deal first with issues that concern privacy.

Part 1 deals with amendments to the Aeronautics Act, to enable the minister to make security measures relating to aviation issues. The bill enables the Minister of Transport, or a person designated by him or her, to request information on passengers from airlines or aviation reservation systems if there is an immediate threat to that flight. The information can be shared with the RCMP, CSIS, the Minister of Citizenship and Immigration, the Minister of National Revenue and the CEO of the Canadian Air Transport Security Authority.

During debate in the other place on the provision of data, there was discussion about the words "any flight specified" and whether that meant data from one specific flight or a continuous feed from all flights. Government officials confirmed that the intention of this clause of the bill was to enable a continuous data feed from all flights. Honourable senators, we will have to look carefully at the proposed section 4.82 of this bill to ensure that we are not allowing greater access to Canadians' private information than is absolutely necessary for security reasons.

Concerns have also been expressed about the privacy of the data collected by the government in the name of aviation security. Data collected from airlines and aviation reservation systems is to be destroyed within seven days unless it is required for investigations of threats to national security. The commissioner of the RCMP and the director of CSIS are required to review all information retained beyond the seven-day period at least once a year and order its destruction if it is no longer needed for transportation or national security purposes.

A record must be kept setting out the reasons why information is being kept, but what is not clear is whether any of the review agencies or civilian oversight agencies, like the Security Intelligence Review Committee, will be able to review these records to determine if the information retained is really required to be kept. There is no provision for report to Parliament on data that has been retained longer than seven days.

Other countries will be able to receive lists of passengers on flights departing from Canada or on a Canadian airline aircraft if the flight is scheduled to land in that country. In effect, we will be providing information to other countries about passengers that may or may not be Canadians. As well, the bill is silent as to how long foreign countries can keep this information.

Under the National Defence Act clauses of this bill, a person designated by the Minister or the Chief of the Defence Staff can intercept any private communication that transits through the

department's computer systems. The objective of the amendment is to protect the department's computer systems and networks. However, the provisions of the bill enable secret interceptions, and the authorizations to intercept are not subject to the Statutory Instruments Act or parts of the Criminal Code that prohibit the interception of private communications.

The Commissioner of the Communications Security Establishment is charged with reviewing activities carried out under an authorization to ensure compliance with the law, and the report is made annually to the minister but, again, there is no requirement to report to Parliament.

The second issue I want to raise is the incredible power that this bill gives to ministers of the Crown under the rubric of interim orders. The Leader of the Government has stated that only matters that can be covered by interim orders are matters for which Parliament has already given approval in the regulation-making scope of the acts in question.

The orders come into effect immediately, but must be approved by the cabinet within 14 days, tabled in Parliament within 15 days, and published in the *Canada Gazette* within 23 days. In effect, the minister has complete power for two weeks through interim orders before cabinet has to approve them, 15 days before Parliament gets to see them, and 23 days before the public is notified.

Interim orders are exempt from sections 3, 5 and 11 of the Statutory Instruments Act.

Section 3 of that act allows the Clerk of the Privy Council and the Deputy Minister of justice to examine proposed regulations to ensure that, and I quote from section 3(2)(b):

it does not constitute an unusual or unexpected use of the authority pursuant to which it is to be made;

and

(c) it does not trespass unduly on existing rights and freedoms and is not, in any case, inconsistent with the purposes and provisions of the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*;

This bill could trample on the basic rights and freedoms that are constitutionally guaranteed to all Canadians, at the whim of a minister, with virtually no checks and balances on that power.

The member for Mount Royal noted in the other place, in the examination of an earlier version of this bill, that the bypass of the Statutory Instruments Act means that the security and screen filter, the filtering out of objectionable features before the regulations are enacted, is absent.

• (2350)

What is objectionable to bringing in these new powers is that we already have an Emergencies Act that enables the government to react to emergencies and be accountable to Parliament and Canadians for their actions. The Emergencies Act spells out the powers of Parliament to review, amend or revoke orders or regulations that are brought in to deal with the emergency. These orders or regulations must be brought before Parliament within two days of being made, where they are debated and voted on. In contrast, interim orders under Bill C-17 are tabled in each House of Parliament, but there is no requirement that Parliament actually debates, amends or approves the orders.

There seems to be an argument that interim orders complement rather than replace the Emergencies Act. Does that mean we have degrees of emergencies? If so, what constitutes an emergency that requires the Emergencies Act, and what constitutes an emergency that requires interim orders? Who makes that decision, and what are the criteria for the determination? The difference is that the Emergencies Act provides for parliamentary oversight; interim orders do not.

Finally, I want to comment about our fight against terrorism. Terrorism threatens the fundamental freedoms of Canadians, and we must do everything we can to fight it. Our own Standing Senate Committee on National Security and Defence, in their outstanding work over the past two years, has noted that Canada must be able to defend itself. This means resources and investments. It means ensuring our military, our Coast Guard, the RCMP and CSIS are funded at an adequate level. That also means coordinating our efforts with all those committed to that war — because that is what it is, a war against terrorism — and particularly with the United States.

Nonetheless, honourable senators, we must be careful about bringing in new laws that could threaten the basic freedoms that make Canada what it is. Bill C-17 adds to the arbitrary power of government without the checks and balances to ensure that privacy rights are protected. Latitude allowed under interim orders is excessive and contrary to basic values.

I have touched only on a few of the anxieties Bill C-17 raises, noble as its purpose may be. Bill C-36 was twice given thorough study by the Senate, and I suspect that its cautious application to date, in large part, is a result of the many concerns raised here on all sides. Now I trust a similar approach will be taken on Bill C-17 in committee to allow a similar result.

On motion of Senator Forrestall, debate adjourned.

[Translation]

THE SENATE

Hon. Marcel Prud'homme: Honourable senators, I rise on a point of order. It is 11:55 p.m. If we tackle one of the following points on the Order Paper, the debates will be quite vigorous. I think it would be better to stop now.

Senator Kinsella has indicated that he is tired. I know he would like to participate in the next debate because it is on a motion of some importance to him. I wonder if it might be preferable, in a gesture of cooperation to adjourn now. We could continue but the disorder would only last five minutes.

I appeal to Senator Robichaud, an understanding man, who knows that at this late hour it is not a good idea to get bogged down in weighty debates. Moreover, Senator Lapointe has asked me to have an item that is important to him stand in his name. The other item is one on which I wish to speak, of course. I said that I would speak but I will certainly not do so at this late hour.

[English]

HUMAN RIGHTS

FACT-FINDING TRIP—OCTOBER 10-17, 2003— REPORT OF COMMITTEE—DEBATE CONTINUED

On the Order:

Resuming debate on the consideration of the seventh report of the Standing Senate Committee on Human Rights (fact-finding mission), tabled in the Senate on November 4, 2003.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I think I found myself at this very point at this very time, 24 hours ago.

Senator Robichaud: We want a repeat performance.

Senator Kinsella: No, no. I want to compliment our colleagues who paid the visit to the United Nations offices in Geneva and, according to their report, did have some important meetings with key operatives in the United Nations High Commission for Human Rights office.

I was pleased, for example, to see that they met with my old friend Mr. Bertrand Ramcharan, who is the Acting High Commissioner for Human Rights. Many honourable senators might find it interesting to know that Mr. Ramcharan worked closely with Canada's Professor John Humphrey, who wrote the first draft of the Universal Declaration of Human Rights.

On page 5 of the report, I also noted that they had a round table with a number of non-governmental organizations on human rights. Among the participants is another distinguished Canadian, Philippe LeBlanc, who represents the Dominicans for Justice and Peace, as well as representing the Franciscans International. Both of those religious orders, the Dominicans and the Franciscans, are well known, and Philippe LeBlanc is himself a Dominican priest. He has been one of the leaders in the non-governmental organization community, not only here in Canada but internationally.

Yesterday, we mentioned, and I will leave it on the record, that I think it is perfectly clear; that the meaning of the provision of the International Covenant on Economic, Social and Cultural Rights makes it patently clear — article 13 — and that the clarification was important.

Our colleagues also paid a visit to Strasbourg and, in particular, to the Council of Europe and the European Court of Human Rights. That was a worthwhile visit because that European regional system is something that we, as Canadians, should keep an eye on. Honourable senators will recall the interest in Canada in many quarters during the last constitutional round for setting in place a Canadian social charter. In Europe, they do have the

European Social Charter, as well as the European Convention of Human Rights.

I compliment our colleagues for the visit that they made, and their very busy schedule. I hope that we will maintain the relationship with those Europeans.

The Hon. the Speaker *pro tempore*: Honourable senators, pursuant to rule 6(1), it being twelve o'clock midnight, I declare the motion to adjourn the Senate is deemed to have been moved and adopted.

The Senate adjourned until tomorrow at 9 a.m.

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Friday, November 7, 2003

—

THE HONOURABLE DAN HAYS
SPEAKER



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THE SENATE

Friday, November 7, 2003

The Senate met at 9 a.m., the Speaker in the Chair.

[Translation]

Prayers.

ROYAL ASSENT

NOTICE

The Hon. the Speaker informed the Senate that the following communication had been received:

RIDEAU HALL

November 7, 2003

Mr. Speaker,

I have the honour to inform you that the Right Honourable Adrienne Clarkson, Governor General of Canada, will proceed to the Senate Chamber today, the 7th day of November, 2003, at 1 p.m., for the purpose of giving Royal Assent to certain bills of law.

Yours sincerely,

Barbara Uteck
Secretary to the Governor General

The Honourable
The Speaker of the Senate
Ottawa

[English]

THE SENATE

PERMISSION TO PHOTOGRAPH ROYAL ASSENT— WESTRAY BILL

The Hon. the Speaker: Honourable senators, I have been asked to put this question to the house. Is it agreed that a still photographer be permitted to take photographs during the Royal Assent ceremony?

Hon. John Lynch-Staunton (Leader of the Opposition): Could His Honour tell the house at whose request this would be done?

The Hon. the Speaker: I received the request from the Table.

Hon. Bill Rompkey: Honourable senators, the request is from the Westray families. I discussed it with the opposition whip, the Honourable Senator Stratton, and we agreed that on this special occasion those families should be given an opportunity to ask for leave to have photographs taken.

Hon. Marcel Prud'homme: Honourable senators, I agree in this case. However, all senators recall the damage that once occurred when a photograph was taken in the chamber before there was a relevant rule. In that photograph, a senator appeared to be sleeping. That image was on Quebec television every night for three years. If that kind of damage does not happen again and if the whips bring together as many senators as possible for Royal Assent, then I would agree to this request.

Senator Rompkey: Honourable senators, the photograph will not be of the Senate but of the Royal Assent ceremony and her Excellency the Governor General receiving Bill C-45.

Hon. John G. Bryden: Honourable senators, I want to be certain that the Westray bill is on the list for Royal Assent today. I noticed at the end of Bill C-45 that it will come into force on a day or days to be fixed by order of the Governor in Council.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, that has nothing to do with the Royal Assent date.

Senator Bryden: I understand, thank you.

The Hon. the Speaker: Is it agreed, honourable senators?

Hon. Senators: Agreed.

Senator Lynch-Staunton: Honourable senators, I would like to know where the photographer will be. Will people with a particular interest in Bill C-45 be on the floor? How far will this be taken? I believe this will set a dangerous precedent. Bill C-45 is called the "Westray bill," but it does not help the Westray miners.

Senator Rompkey: Honourable senators, as far as I know, the photographer will be in the gallery to photograph the Royal Assent ceremony. The Westray people will be there as well.

• (0910)

[Translation]

SENATORS' STATEMENTS

THE SENATE

EXPRESSION OF GRATITUDE TO SENATORS AND STAFF

Hon. Lise Bacon: Honourable senators, it seems fitting today to take a few moments to warmly thank all those who have worked in cooperation with the Standing Senate Committee on Internal Economy, Budgets and Administration over the past several months. A committee responsible for internal economy cannot do its work without the support of those affected by its decisions, meaning the senators themselves, whom we serve, and the Senate administration, those public servants who serve this institution with loyalty and devotion.

On numerous occasions, I have insisted on our need for the honourable senators' cooperation in order to accomplish our mission. Some have responded positively to my invitation, others have dismissed it out of hand. But this morning, I want to express my gratitude toward and appreciation of those colleagues who encouraged me in my endeavours and who made this mission easier. For me and my committee, the mission was quite simply the proper management of Senate resources. In the eyes of Canadians, we were responsible for ensuring effective management of government funds. We fulfilled this mandate to the best of our abilities, knowing that ethical behaviour was central to our mission. For all my colleagues who were sensitive to this undeniable reality, I have just two words: thank you.

I must mention the remarkable work of all the Senate staff. I cannot forget their unfailing dedication, their ability to work under often intense pressure and their understanding of the purpose and grandeur of the institution they serve. If these men and women serve the Senate to the very best of their abilities, it is because they believe in the nobility of the upper chamber and its essential role in our parliamentary system.

The Senate staff includes employees at all levels: support staff, professionals and managers who are motivated and determined individuals providing high quality services. This dedication is mainly due to their unwavering pride in serving an institution that contributes to the quality of parliamentary exchange and the necessary reflection on key issues, and one that represents minorities and the provinces.

I thank the Senate staff and congratulate them, particularly those with whom I have worked closely, namely the entire management team. They have worked wonders because of the strength of their commitment and of their motivation.

In closing, I want to call on all honourable senators to join me in thanking all our staff for the excellent job they are doing. We, in the Senate, must earn the dedication of those serving this institution. By our actions, we must seek to make everyone proud of the people who represent them in this chamber and who bear the title of honourable.

[English]

REMEMBRANCE DAY 2003

Hon. Sharon Carstairs (Leader of the Government): "In Flanders Fields the poppies blow."

Honourable senators, on November 11, as always, Canadians will gather and they will mourn those who made the ultimate sacrifice for their country and gave their lives so that Canadians could live in a free and democratic country.

Earlier this week, honourable senators, we passed a bill entitled the Holocaust Memorial Day bill. We passed that bill, I believe,

not just because those who went through that horror must remember but that we all remember.

At that time, I indicated that I hoped a result of the bill would be that children across the country would learn of that horror. Equally, they need to learn of the horror of war. They need to learn of the bravery of good men and women. They need to learn that we must protect those freedoms that are most important to us.

I particularly congratulate the veterans, some of whom are getting quite old. They are going into the classrooms and the schools and talking to our young people. What is their message? Their message is: Let us not have war unless we absolutely have to, but if we have to, then, please, honour those who have gone before. Honour those who are serving now in places like Afghanistan and those who will serve in the future.

Hon. Senators: Hear, hear!

Hon. J. Michael Forrestall: "Between the crosses, row on row."

Honourable senators, this year has been chosen by the Department of Veterans Affairs to remember what has become known as the "Forgotten War," if you will pardon that stretch of imagination.

The Korean War was unique. Like other wars, it created hardship, claimed lives and injured people. It taught us national lessons. It taught us that we were able to mobilize for good reasons. In 1953, it taught a generation of Canadians, who were too young to have joined the Second World War, but old enough for the Korean war, that we, too, like our predecessors, had philosophers. We had people who would write for us about these trying times.

An entire generation of Canadians was without that kind of help. We did not have the music, as Senator Banks will know, to turn to. The great writers had either written or were preparing to write. No one wrote of war for the children who grew up in the 1930s and 1940s. We had a particular lesson to learn.

I join with the Leader of the Government in the Senate in indicating to the families of all those who served in Korea our deepest sympathy and our heartfelt thanks for their contribution and ask that the souls of their loved ones rest in peace.

• (0920)

Because the Royal Canadian Navy was first to offer help in this conflict — they are placed, of course, at the head of the battle list — I want to put the following list on the record for posterity:

The Royal Canadian Navy: *HMCS Athabaskan*, *HMCS Cayuga*, *HMCS Sioux*, *HMCS Nootka*, *HMCS Huron*, *HMCS Iroquois*, *HMCS Crusader* and the *HMCS Haida*.

The Canadian Army: Lord Strathcona's Horse (Royal Canadians); 2nd Field Regiment, Royal Canadian Horse Artillery; 1st Regiment, Royal Canadian Horse Artillery; 81st Field Regiment, Royal Canadian Artillery; The Corps of Royal Canadian Engineers; The Royal Canadian Corps of Signals; The Royal Canadian Regiment — 2nd Battalion, 1st Battalion and 3rd Battalion; The Princess Patricia's Canadian Light Infantry — 2nd Battalion, 1st Battalion and 3rd Battalion; The Royal 22nd Regiment — 2nd Battalion, 1st Battalion, and 3rd Battalion; The Royal Canadian Army Service Corps; The Royal Canadian Army Medical Corps; The Royal Canadian Dental Corps; Royal Canadian Ordnance Corps; The Corps of Royal Canadian Electrical and Mechanical Engineers; Royal Canadian Army Pay Corps; The Royal Canadian Postal Corps; The Royal Canadian Army Chaplain Corps; The Canadian Provost Corps; and the Canadian Intelligence Corps.

Royal Canadian Air Force: No. 426 (Thunderbird) Squadron — in addition, 22 RCAF pilots flew with the U.S. Fifth Air Force.

Honourable senators, I wish to put that list on the record so that students, down the road, will know that Canada participated to its fullest, that all of its troops from its three Armed Forces contributed to that international undertaking.

Therefore we remember the "Forgotten War," and we remember those who fought in it. For anyone who wants to visit, it is a delightful country. One veteran said to a group of us, which included a young Canadian who had asked how he felt today, 50 years later, and he looked at the small gathering around him and said, "You know, I guess it was worthwhile." God bless him.

Hon. Marcel Prud'homme: Honourable senators, I was getting up on a subject that I wanted to talk about yesterday, but before doing so I will join Senators Carstairs and Forrestall in paying homage to all those who have sacrificed their lives in the service of peace and justice in the world and for Canada.

I had the honour to represent the Right Honourable John Turner once on November 11, at the same ceremony to which we were invited yesterday by Honourable Senator Carstairs to attend next Tuesday, if we are in Ottawa. However, in my district there is one place in particular, called the Flanders Hall. Unfortunately, the veterans are all dying and my district has changed considerably. Now there are new Canadians from all over the world, and they are very surprised when they see a small parade and a wreath, not knowing what this ceremony is all about. I am thankful that Honourable senators Carstairs and Forrestall have reminded us that education is the only way to perpetuate the remembrance of these people, and to also remind them of the horrible tragedies that will be referred to this week.

BHUPINDER LIDDAR

CONGRATULATIONS ON APPOINTMENT AS CONSUL GENERAL

Hon. Marcel Prud'homme: Honourable senators, my second point is to rejoice. Canada is such a fast-changing society. The Prime Minister was very happy to announce this week the first nomination ever of a Canadian Sikh to become the head of a diplomatic mission. We all know it is Mr. Bhupinder Singh Liddar, who is a very familiar person on Parliament Hill. He has been publisher and editor of the prestigious *Diplomat & International Canada* magazine that we read in our offices every month and on which we all rely for valuable information. Mr. Liddar has contributed to *The Diplomatic World* program on CPAC, and is a regular columnist for the *Hill Times*. He was appointed on October 21. He speaks — and look at the description of the first Canadian to represent us — Punjabi, Swahili, English, and I can attest that his French is getting a little bit better every day.

ROUTINE PROCEEDINGS

STUDY ON ADMINISTRATION AND OPERATION OF THE BANKRUPTCY AND INSOLVENCY ACT AND THE COMPANIES' CREDITORS ARRANGEMENT ACT

LEAVE GRANTED TO WITHDRAW FIFTEENTH REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE

Hon. Richard H. Kroft: Honourable senators, with leave of the Senate, I would ask permission to withdraw the fifteenth report of the Standing Senate Committee on Banking, Trade and Commerce, entitled "Debtors and Creditors Sharing the Burden: A Review of the Bankruptcy Insolvency Act and the Companies' Creditors Arrangement Act," tabled in Senate on Tuesday, November 4, 2003, and replace it with a revised copy.

The Hon. the Speaker: Is it leave granted, honourable senators?

Some Hon. Senators: Agreed.

An Hon. Senator: Explanation.

Senator Kroft: This is a minor technical matter. Those senators who have no doubt already thoroughly absorbed the report know that it is 242 pages of complex material gathered over an extensive period of time. It has come to the attention of the committee that there were two errors. One error is that some academics who had presented a submission to the committee had inadvertently been omitted from the witness list. We take that seriously, particularly in view of the enormous time and trouble that these witnesses go to.

Second, on a more substantial matter, it has come to the attention of the Banking Committee that there is an error in the committee's discussion of the current treatment of Workers' Compensation Board claims on pages 139 through 143 of the report. We drafted this section of the report under the understanding that section 136(1) of the Bankruptcy and Insolvency Act provided for priority claims of all Workers' Compensation Boards that would rank after secured creditors but prior to unsecured creditors.

It has been drawn to our attention since the tabling of the report that this priority in fact existed before 1997 and ceased to exist under a twilight provision after that time. It was the intent of the committee that Workers' Compensation Board claims be treated as preferred claims, subsequent to those of secured creditors and in priority to the unsecured creditors under both the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act by virtue of another recommendation made to the committee.

Honourable senators, we are correcting language to be consistent with the recommendation that we have already made. It is just that the reference was to a clause that was not as we had referred. That is the complete extent of the changes involved in this withdrawal and resubmission.

I should add that the cost would be minimal in connection with this effort. It will be only those pages that were resubmitted, and the electronic transmission can be quickly accomplished as required. With respect, I would ask for the concurrence of the Senate.

The Hon. the Speaker: Is leave granted to accede to Honourable Senator Kroft's request?

Hon. Senators: Agreed.

[Later]

AMENDED REPORT TABLED

Hon. Richard H. Kroft: Honourable senators, I move that the report be placed on the Orders of the Day for consideration at the next sitting of the Senate.

The Hon. the Speaker: Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to.

[Translation]

BUSINESS OF THE SENATE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I ask for leave of the Senate to revert to Government Notices of Motions after the Orders of the Day, Inquiries and Motions, to discuss the adjournment motion.

[Senator Kroft]

[English]

The Hon. the Speaker: Honourable senators, is leave granted to revert to Government Notices of Motions immediately prior to the adjournment motion on our Order Paper?

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Leave is refused.

The Hon. the Speaker: Leave is not granted.

• (0930)

QUESTION PERIOD

NATIONAL DEFENCE

PUBLIC ACCOUNTS—CONTRACT TO DESIGN NATIONAL DEFENCE LOGO

Hon. J. Michael Forrestall: Honourable senators, I have a brief question for the Leader of the Government in the Senate. Frankly, I hope it is not my last question to her. I hope the leader stays on and continues the fine work she has done over the last several years.

Honourable senators, the newly released Public Accounts reveal that in fiscal 2002-03, \$1.2 million was paid by the Department of National Defence to the firm Groupaction for professional and special services. Could the Leader of the Government advise the Senate whether this was for a contract to design a logo that was never used, or whether it was for something else?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I have no idea whether that amount of money was for the logo for the forces to which I assume the honourable senator is referring, which logo was then rejected.

As the honourable senator knows, many of the activities of that company are under investigation.

Senator Forrestall: Honourable senators, I was actually more concerned about the logo than the company.

Without getting into the details of the firm, could the Leader of the Government, either now or later, report back to the Senate on, first, what the contract or contracts were for, second, whether the contracts were put out to tender and, third, whether the work was actually undertaken?

Senator Carstairs: I would be pleased to attempt to obtain those answers for the honourable senator.

AGRICULTURE

WESTERN CANADA—FARMING CRISIS—
BOVINE SPONGIFORM ENCEPHALOPATHY

Hon. Leonard J. Gustafson: Honourable senators, I would be remiss if I did not ask a question about the very serious problems in the agriculture industry.

Yesterday, the Agriculture Committee heard from two farmers whom I know well. They made it very clear that the situation in agriculture is very difficult. Added to the existing problem of low prices, there is the current situation with cattle and so on. With the government in a state of flux, it seems to me that it may be spring before something positive can be done about these problems.

The Leader of the Government in the Senate has been very responsive to questions with regard to farm problems because, coming from Manitoba as she does, she understands them. Would she represent to cabinet, or wherever the power rests, the importance of taking action on this difficult situation before spring seeding?

Hon. Sharon Carstairs (Leader of the Government): I thank the honourable senator for his question. Of course I will continue to raise these concerns, as I have done on a nearly daily basis.

There is some good news, as the honourable senator knows, with respect to BSE. On October 31, the United States Department of Agriculture issued a draft regulation. They have called for a 60-day public comment period. It is to be hoped that by January 5, which I understand is the drop-dead date, they will have had the required commentary and will be able to open the border.

As the Honourable Senator Gustafson has clearly indicated, that, in and of itself, will solve the problems, not only for the beef industry but for other sectors as well. I can assure honourable senators that we will continue to work on these issues.

WESTERN CANADA—FARMING CRISIS—
GRAIN PRICES

Hon. Leonard J. Gustafson: The positive reports with regard to the possible opening of the border are very encouraging.

One of the most serious concerns in agriculture today is the very low grain prices. As an example, the price for durum wheat and hard wheat has dropped from approximately \$5 to approximately \$2.40 today. This creates a very serious problem for grain producers and the agricultural industry as a whole. Would the Leader of the Government raise that issue with the powers that be?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I will do so, and I ask the Honourable Senator Gustafson to do whatever he can to get Saskatchewan on board with respect to the Canadian Agricultural Income Stabilization Program, because currently Saskatchewan is presenting a significant hurdle to money moving from the federal government to the farmers who need it.

FOREIGN AFFAIRS

UNITED STATES—CANADIAN CITIZEN DEPORTED
TO SYRIA—NEWS RELEASE—REQUEST FOR INQUIRY

Hon. Marcel Prud'homme: Honourable senators, in response to a senator who was unhappy about not having the opportunity to ask questions, Senator Christensen once said, "I will give you advice. The only way is persistence, my dear, persistence." Therefore, I will be persistent and return to an issue that refuses to die. As I predicted a year ago, it continues to grow, and we have to face it.

In news release No. 169, Mr. Graham, a highly competent minister, made a statement calling on Syria to investigate, et cetera. Why was a seminal statement of that kind not issued to the United States of America and Jordan? Jordan, after all, is supposed to be one of our closest friends. I will not say "ally," because that is something different, but it is a close friend in that vast region.

What happened in the United States is as unacceptable as what happened in Jordan, a country I like very much, as many people here know. Of course, what happened in Syria, if proven, is totally unacceptable. I have let Syrian people at the highest level know my views on this matter. I make no exception with regard to the treatment of Canadians.

I wish to know whether a news release similar to release No. 169 concerning Syria was issued to the United States in regard to Mr. Arar.

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as soon as we learned that a Canadian citizen, Mr. Arar, had been sent from the United States to Syria via Jordan rather than being returned to his country, which is Canada, a protest was laid with the American government.

In just the last few days, Mr. Graham, our Minister of Foreign Affairs, spoke with Mr. Powell, because certain accusations have been made south of the border about information coming from Canadian authorities.

• (0940)

We can find no example of any such information having been given to the United States. We have asked them to look at their files and elucidate for us where they received that information and from what government official, if it was indeed a government official.

FOREIGN AFFAIRS

RUSSIA—RULE OF LAW AND DUE PROCESS—
CONSTRUCTION OF CAUSEWAY—
TERRITORIAL INTEGRITY OF UKRAINE

Hon. A. Raynell Andreychuk: Honourable senators, I wish to turn to two troubling issues that involve Russia. As we know, a high profile businessman has been charged. The entire community that has been following these events understands that if the rule of law were followed, the course of action taken by the government would put them well within its right.

In an interview yesterday, the ambassador from the United States indicated that quiet diplomacy is occurring to encourage Mr. Putin and the government to ensure that the rule of law, a fair trial and due process as known in Russia are followed in this case.

My first question to the Leader of the Government in the Senate is: What action is Canada taking, quietly or otherwise, to ensure and encourage that peace and stability are continued in Russia?

My second question relates to Russia having decided, single-handedly, to build a causeway from its Taman Peninsula to Ukraine's Tuzla Island. This unilateral course of action constitutes an attempt by Russia to take control of that region. Canada was the first Western country to recognize Ukraine's independence in 1991, within its current borders that include Tuzla Island. It is vital that these borders remain inviolable to ensure peace in the region.

What action has Canada taken to clearly express to Russia Canada's unqualified support for the territorial integrity of Ukraine, and what efforts is Canada making to attempt to have some peaceful resolution of this issue?

Hon. Sharon Carstairs (Leader of the Government): The honourable senator asks the question with respect to Russia and the rule of law and due process. One must be careful when one interferes in the processes of other countries, particularly countries that we know are struggling with governance issues. Russia certainly qualifies as one of those.

I do not know of any action that the federal government has taken. I will certainly take from the statements of the honourable senator the fact that she thinks Canada should become involved, and I will bring her recommendation to the government's attention.

In terms of the situation with Ukraine, the statement from the United Nations that the territorial integrity of independent nations must always be protected is one to which we fully subscribe.

Senator Andreychuk: Honourable senators, it would not be an interference with the territorial sovereignty of Russia to continue

to support the rule of law there. In the recent past, we were openly encouraging Russia to continue to build the kinds of structures and institutions that support the rule of law. At this moment, when all eyes are on Russia and its absolute need to continue its economic and peaceful stability, some words of encouragement in line with what we have been doing would be the appropriate thing to do.

It is not the intention to undermine sovereignty, but to encourage the positive signs that have come out of Russia. They are now receiving investment and starting to trade, particularly in the oil sector, and that will bring positive results for the people of Russia. Quiet diplomacy in this case would be the way to go, but it should be conveyed at this point as opposed to a later point.

On the other point of the building of the causeway, this activity could cause eruptions as it involves Russia's territorial integrity. There will be environmental ramifications as well as political consequences. At this moment, with Canada's good offices in Ukraine and Russia, some words to encourage a peaceful resolution of this dispute would be in order.

We often wait too long. If we were to use our good offices of leadership, we might bring some levelling influence to this situation.

Senator Carstairs: The honourable senator is well recognized in the Department of Foreign Affairs and by the minister as someone with great knowledge of Ukraine. I know that when I bring forward her representations, those comments will be considered seriously.

In terms of the situation in Russia, the honourable senator is correct. For a number of years Canada has been engaged in funding governance structures and governance education. Clearly, it is important, if Russia is to maintain her international reputation, that she move forward in a spirit of acceptance of the rule of law and due process.

MALAYSIA—GOVERNMENT REACTION TO
ANTI-SEMITIC COMMENTS OF MALAYSIAN
PRIME MINISTER—MEETING WITH MALAYSIAN
HIGH COMMISSIONER

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, some two weeks ago, the minister answered Senator Tkachuk's question and volunteered to find out who the Malaysian High Commissioner met in the Department of Foreign Affairs following the well-known inflammatory statements by the now retired Malaysian Prime Minister. Does the minister have that information and could she share it with us?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I do not have that information. I do not believe that there is a delayed answer available on that question. At least, one was not presented to me earlier this morning.

We have tried hard to get answers to questions as quickly as we can, and there are very few delayed answers, or indeed written questions, that have not been answered, but I do not have the answer to that one.

Senator Lynch-Staunton: I appreciate the problem of trying to get the department to cooperate and I admire the minister in the way that she has been able to accelerate the process. I commend her and her associate, the deputy leader.

To return to the question, will the minister tell us, now that Mr. Graham is back from abroad, whether he will call in the Malaysian High Commissioner and insist on passing on to him the government's reaction to those statements, because it would have more effect if it came from a senior member of the government rather than from an official, no matter how senior he or she may be.

Senator Carstairs: Honourable senators, I will be pleased to take the recommendation of the Honourable Leader of the Opposition to the Minister of Foreign Affairs.

[Translation]

HERITAGE

MILLENNIUM SCHOLARSHIP FOUNDATION— TRANSFER OF FUNDS TO PROVINCES

Hon. Jean-Claude Rivest: Honourable senators, you will undoubtedly recall that, when we were considering the Millennium Scholarship Program, myself and several other honourable senators were opposed to this federal government initiative. We stated that it would have been preferable for the federal government to include this program in social transfers and make the funds available to each of Canada's provinces. That would have enabled the provincial governments, who have exclusive jurisdiction over education, to develop a system of assistance and grants for students in their provinces, reflecting the particular realities of each region in Canada.

This week, a report was published evaluating the Millennium Scholarships, after three or four years of operation. One of the conclusions of the report is that, despite the considerable amount of money invested by the federal government in the program, the effectiveness of the program is highly debatable. The federal funds have simply replaced existing provincial programs, and created a probably useless bureaucracy at the federal level.

• (1950)

Could the minister make her colleagues in government aware of the possibility of abandoning the Millennium Scholarship Program and transferring the federal money available directly to the provinces, which have exclusive jurisdiction over education, so that each province can provide its students with the assistance they require to complete their university studies?

[English]

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, 85,000-plus students have received millennium

scholarships. If the honourable senator were to ask those 85,000 students whether they thought this program was a good idea, they would respond with a resounding yes.

Hon. A. Raynell Andreychuk: Honourable senators, this scholarship fund was set up to improve access to education. There is no doubt that those students who received financing under the millennium scholarship program have benefited. As well, there is no doubt they think it was a good idea.

The report really goes to the heart of what the government was trying to do. It stated that the intent of the program was to enhance access to colleges and universities by offering federal scholarships. Its real aim was access to education and reduction of student debt load.

The analysis done of the program by some eminent scholars who follow Canadian education, and access to it, pointed out that the foundation was administered privately and that there were hastily signed contracts with each province, allowing the diversion of federal dollars into provincial coffers instead of into enhancing financial aid packages for students. The report also goes on to state that there was no oversight and analysis concerning the accountability of the monies.

It seems to me there needs to be some reassessment because that amount of money should not be displaced by provinces, or otherwise, from existing applicants. The aim was to try to widen the pool of students who would have access to education in Canada. As we know, productivity and competitiveness rest on the ingenuity and training of young people.

While the millennium fund has had a role to play in education, it is not the one that was intended by the legislation, and it has not increased access.

Will the government look at the modality of delivering this amount of money to increase Canadians' access to higher education?

Senator Carstairs: Honourable senators, there is a certain amount of conflict between the position taken by the Honourable Senator Andreychuk and the position taken by the Honourable Senator Rivest.

Like Senator Andreychuk, I agree that it should improve access. However, I also agree with Senator Rivest that if provinces take this money and choose not to make it available for greater access, then there is limited effort in which the federal government can engage. After all, education is the primary responsibility of the federal government. While there is a tradition in this country of funding universities through chairs, research dollars and other sources of income, when provinces choose to take money from funds provided by the federal government and divert them elsewhere, what the province can do is limited.

I find the same difficulty with respect to the Child Tax Benefit. As the honourable senator knows, in most cases welfare recipients in this country do not receive that benefit because it is clawed back by the provinces.

Senator Andreychuk: Honourable senators, I make the point that federal funds were clawed back originally from provinces. Therefore, we cannot put the entire blame on them. This was new money. It was put in to access to education. I do not think you can then say that the provinces are shortchanging anyone. The provinces are exercising their discretion.

I would ask the government to look at ways and means to improve access to education because, clearly, the provinces need more money for education.

Senator Carstairs: Honourable senators, education is a responsibility of the provinces. They must fund education. According to the report whose analysis the honourable senator has mentioned this morning, these are additional dollars for education which some provinces did not spend on providing greater access.

[Translation]

Hon. Gérard-A. Beaudoin: Honourable senators, are scholarships awarded in the provinces because of the federal spending power.

Jurisprudence from the Supreme Court of Canada and other courts says that we are not to interfere in provincial jurisdictions. I am in favour of the spending power. I am not challenging it. I think this power is necessary, because some provinces are richer than others and, in this country, we are supposed to have equal opportunities. That does not mean that there will not be variations from one province to another.

I remember the days when federal support for universities was being discussed. Quebec refused any funding. At the time, the universities had told Premier Maurice Duplessis that this made no sense and that there should be federal funding for universities. We eventually developed a very good system.

I fail to see why we cannot do the same thing with the millennium scholarships. The Leader of the Government said that 85 per cent of students are very pleased. Great! That comes as no surprise to me. I have been teaching in university for years, and our students need these scholarships. We could allow variations from one province to the next, not on the amount — we will not touch that — but on the approach.

We had come up with a special system for Quebec, which was being treated like any other province, but not necessarily with the same approach.

[English]

Senator Carstairs: Honourable senators, that is exactly what the federal government did. It negotiated variable agreements with every single province. The agreements signed by the provinces with respect to the millennium scholarships are not identical. The monies going to the provinces are identical, but the agreements that have been signed are not.

In some instances, this has allowed some provinces to take money from their education-financing envelope and replace it with these dollars the federal government provided to them. This has meant that, in some places, there has not been the same equity in the number of scholarships offered. From the federal government's point of view, there has been equality in terms of the monies given.

[Translation]

Senator Beaudoin: I think this is very good, but I am a little more ambitious. If we are able to achieve 85 per cent satisfaction, why not aim for 90 or 95 per cent? Entering into agreements that may vary from one province to the next is already a step in the right direction. I agree and I applaud that.

[English]

Senator Carstairs: Honourable senators, I did not mention a percentage factor at all. What I stated was that 85,000-plus students have received millennium scholarships.

[Translation]

Senator Rivest: I would have preferred to see federal funds for education go directly to the provinces. I understand that the Government of Quebec has concluded an agreement with the federal government on the millennium scholarships.

Students in Quebec have the lightest debt load in Canada because of the freeze on tuition fees. However, the financial situation of students is not a priority of the Government of Quebec.

• (1000)

Though though this is a major problem in Quebec as well, it is not a priority. The academic community in Quebec feels that, if the Canadian government has funds available for education, it needs to transfer them to the provincial governments, because it is exclusively their responsibility. Provincial governments can then allocate these funds in keeping with their general responsibilities and their priorities for education, which no doubt include a student aid program. This is why implementation of the Millennium Scholarship Program has created problems in Quebec, where this is not a priority, unlike other Canadian provinces or regions.

[English]

Senator Carstairs: Honourable senators, as a former educator, I think that Quebec has done an incredible job in keeping the tuition fees at its universities at the lowest level in this country. That has, in and of itself, provided great accessibility to the young people of your province.

However, the circumstances are not the same right across this nation. There have been circumstances in the past — not for Quebec, though; let me be clear about that — in which agreements signed with the provinces for monies to be transferred there resulted in a complete withdrawal by the provinces from the education field, particularly with respect to post-secondary education.

I think it is fair to say that young people in this country want to know that when dollars are earmarked for education, they are, in fact, spent for that purpose. I think an interesting debate in that respect will need to take place with the provinces within the next short period of time. Now that we have separated out the health portion of the transfer to the provinces, the question for discussion will be whether we should also look to separate out the education portion so that the same kind of clear accountability can be shown.

ORDERS OF THE DAY

INCOME TAX ACT

BILL TO AMEND—THIRD READING

Hon. Wilfred P. Moore moved the third reading of Bill C-48, to amend the Income Tax Act (natural resources).

He said: Honourable senators, it is my pleasure to speak today on the third reading of Bill C-48, to amend the Income Tax Act with respect to natural resources taxation. This bill introduces changes to the federal income tax structure for Canada's mining and oil and gas industries. Following extensive consultation with all parts of the resource industry, the government announced its intention to change the tax structure for the resource industry in the February 18, 2003 Budget. That announcement was followed by the release of a technical paper for public comment in March. A further series of consultations was subsequently held with interested industry groups across Canada.

The 2003 Budget also announced other initiatives that impact on this sector and which complement these changes. Several of those measures were included in Bill C-28, the Budget Implementation Act 2003, which we debated earlier this year. Those changes included eliminating the federal capital tax over five years, increasing the amount of annual income held eligible for the federal small business tax rate to \$300,000 from \$200,000, and extending the temporary 15 per cent mineral exploration tax credit until the end of the year 2004.

The bill we are debating today ensures that the resource sector will benefit from a new tax structure. These new measures reflect the government's belief in the importance of the resource sector. In 2001, for example, the sector accounted for almost 4 per cent

of Canada's GDP. As well, over 170,000 Canadians currently work in resource businesses. These new measures also reflect the government's ongoing commitment to an efficient and competitive corporate income tax system.

Honourable senators, I would now like to provide a brief overview of the key elements in Bill C-48.

The first measure ensures that resource sector firms are subject to the same statutory rate of corporate income tax as firms in other sectors. When the government reduced the general corporate income tax rate from 28 to 21 per cent under the five-year tax-reduction plan, the lower rate did not apply to resource income. Now, through Bill C-48, the federal corporate income tax rate on income earned from resource activities will be reduced from 28 to 21 per cent by the year 2007. The statutory rate is often the first piece of information viewed by prospective investors. If Canada is to send a positive message to investors that it is competitive, then this uniform lower rate is essential.

A second measure concerns the 25 per cent resource allowance. The resource allowance was originally introduced in 1976 to protect the federal income tax base from rapidly increasing royalties and mining taxes. While it places a ceiling on deductions, it often distorts economic signals. In some cases, the resource allowance may result in a bias against investment in more valuable resources which are more likely to yield a higher royalty return. In other cases, it provides a deduction greater than royalties and mining taxes actually paid. The complexity of the resource allowance calculation has also resulted in substantial compliance costs for industry and substantive costs for government.

As my colleagues are aware, economic conditions have changed significantly since the 1970s. In today's economic environment, there is greater pressure on producers to be efficient, and on host jurisdictions to levy royalties at competitive rates. As a result, Bill C-48 eliminates a resource allowance and provides a deduction for the actual amount of provincial and other Crown royalties and mining taxes paid. In 2007, once these measures are fully phased-in, they will level the playing field and place all projects on an equal footing. Companies will get a deduction for actual royalties paid, irrespective of whether they are paid to the Crown or to non-crown rights-holders.

The measures do not alter the treatment of royalties paid to First Nations and other private resource owners, which will continue to be deductible. The consistent treatment of all royalties will reduce distortions by removing any tax advantage for companies paying royalties to non-Crown landowners.

• (1010)

Honourable senators, the two measures I have just described will result in a tax structure that imposes the same corporate tax rate on resource income as on other corporate income and a consistent treatment of expenses between resource projects and the resource sector and other sectors of the economy.

A third measure in Bill C-48 introduces a new 10 per cent mineral exploration tax credit. Corporations incurring qualifying mineral exploration and development expenses before a mine reaches production in reasonable commercial quantities will be eligible for this new tax credit.

Honourable senators, some people have questioned whether the measures in this bill are consistent with Canada's Kyoto commitment to reduce greenhouse gas emissions. They are completely consistent. The uniform tax rate and more consistent treatment of expenses will mean that investment will be allocated more consistently with underlying economic factors. In implementing Canada's Kyoto commitment, the oil and gas and mining sectors will be called on to make a significant contribution to a 55-megaton reduction in greenhouse gas emissions through the large industrial emitters program. Renewable energy initiatives are also a key part of the government's Kyoto response. Budget 2003, for example, allocated an additional \$2 billion over five years to support alternative energy technologies that help reduce greenhouse gas emissions. It also supported renewable energy through tax measures, an excise tax exemption for certain alternative fuels and provision of accelerated tax depreciation for additional types of renewable energy and energy-efficient equipment.

Bill C-48 also includes a measure that will enhance the treatment of investments in renewable energy and energy conservation projects. Corporations will now be allowed to renounce Canadian renewable and conservation expenses to flow-through share investors in a year where the Canadian renewable and conservation expenses will be incurred the following year. This measure will provide greater flexibility in the timing of investments financed using flow-through shares. The treatment of flow-through shares investments in these projects will now parallel similar investments in non-renewable energy projects.

Honourable senators, as I indicated above, this new package is a product of extensive consultations with all parts of the resource sector. Overall, the changes will be positive for both the mining industry and the oil and gas industry. Cumulatively, these measures will substantially reduce effective tax rates for both industries. For oil and gas, this change reverses a current disadvantage relative to the United States of America. For mining, it builds on an existing advantage. In both cases, the changes place the Canadian resource sector in a markedly improved position to attract capital for exploration and development.

In summary, honourable senators, let me say that this new regime meets the three goals established by the government when it was developing a tax structure for the resource sector. First, the tax regime will be internationally competitive, particularly in North America. Second, the new regime will be transparent for firms and investors. Third, the new regime will promote the efficient allocation of investment, both within the resource sector

and among sectors of the Canadian economy. These changes will take effect from January 2003 and will build upon a Canadian tax advantage to support investment, innovation, productivity, economic growth and jobs for Canadians.

In closing, I thank all members of the Standing Senate Committee on Banking, Trade and Commerce, particularly Senator Kelleher, for their work in analyzing this bill and for the recognition of the benefits of this bill for our natural resource industries. I ask and encourage all honourable senators to give their support to Bill C-48.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I thank Senator Moore for his insightful presentation. The bill does have our support in terms of its thrust. A number of issues were well-canvassed by our colleagues in the committee. As indicated, there was support there for reducing the tax burden on the resource sector.

It is important to place on the record the fact that, between the federal and provincial governments, governments in Canada are collecting almost \$6 billion each year in taxes and royalties from the oil and gas sector, plus several hundred millions of dollars more from the mining sector. By any measure, those sectors are major contributors to the consolidated revenue and the kinds of social programs and other programs that are delivered by governments. In many ways, we owe a great deal to those important sectors of our economy.

I simply want to place on the record some aspects of the process behind this change that have raised some questions.

During the hearings of the Banking Committee, we heard testimony from representatives of Aboriginal Canadians, particularly in Western Canada, who outlined their concerns about this change in the tax treatment. It would appear that a side effect of the legislation, which aims to reduce the corporate tax rate while eliminating the resource allowance, will be to make resource extraction on reserve land less advantageous than it was previously.

While this impact on First Nation is clearly not the primary intent of the new tax regime, it looks as if it may be one of the effects or unintended results. We can debate whether they are losing an advantage or whether the amendments will just level the playing field, and we can debate whether or not this should matter, but we will set that aside. Instead, I should like to shed a little light on the process leading up to the bill reaching the Senate, going through the important study that it went through in our committee, and being now before us at third reading.

In committee, our colleagues heard the testimony from one witness, Mr. Roy Fox, who is President of the Indian Resource Council of Canada, and Ms. Marilyn Buffalo, representing the Samson Cree nation. Their focus was on the failure of the government to either consult with them or even inform them that this legislation was coming.

The committee was told that these persons wrote to the Minister of Finance in June last, and that the Minister of Finance did not reply. We understood that they asked to appear before the Finance Committee in the other place and, once again, did not get a hearing in the other place.

Mr. Fox told our committee:

Mr. Chairman, we requested to be included in the process through the House of Commons. We were not allowed to make a presentation to that standing committee when it was interviewing witnesses.

Senator Tkachuk asked:

To clarify, you wrote a letter requesting to appear and the chairman or somebody told you that you could not appear or were not to appear?

• (1020)

The record from our committee indicates that Mr. Fox replied:

We were told that we were too late. This was after we had been in touch with these offices well before — after the second reading.

The committee was also told that these witnesses had written a letter to the Minister of Finance in June, pointing out their concerns. The record of our Banking Committee indicates Mr. Fox stating to our colleagues:

While there appears to have been extensive consultation with the resource industry, including the Canadian Association of Petroleum Producers, regarding the proposed amendments, there has been no consultation with those who will likely be impacted the most, namely First Nations.

The IRC —

— which is the Indian Resource Council —

— wrote to the Minister of Finance on June 17, 2003, expressing our concerns with the proposed Bill C-48, especially as it pertains to the resource allowance, and requested a delay until First Nations were fully consulted. Although our correspondence has not been responded to, we understand that copies of the letter have been circulated to appropriate committee members in both the House of Commons and the Senate.

Later, in response to a question about whether there had been any attempt to follow-up on this letter, Mr. Fox told our colleagues on the Banking Committee:

We followed up the initial correspondence with phone calls and e-mails. There has been some response through e-mail, but not to the particulars of that piece of correspondence.

Mr. Fox went on to give our committee this explanation as to the effects of the legislation on First Nations:

Historically, companies operating on Indian lands have been able to deduct against income the 25 per cent resource allowance, plus royalties paid on First Nations production. Royalties paid on provincial Crown lands have not been deductible against income. This means that industry has been able to achieve higher after-tax cash flows on Indian lands than on provincial lands. These after-tax cash flows have been used to offset the additional costs of doing business on Indian lands. These additional costs arise from the need to negotiate economic and social benefits with First Nations, collaborating with First Nations on training and employment opportunities, and contributing towards community economic and social development. In other words, the resource allowance and the deductibility of royalties have provided industry with an added incentive to operate on Indian lands.

It was also pointed out that the Victor Buffalo case, which is before the courts in Calgary, could affect this legislation as issues in that case pertain to oil and gas.

Honourable senators, our Banking Committee, to its credit, was the first and only government institution to give this community or these individuals a hearing. I think it is important to underscore that and place it on the record because it proves, once again, that in the examination of legislation, we do make available to Canadians who have an interest in public legislation an opportunity that they might not have been given in earlier review — as in this case. They felt when they testified to this effect that they did not get a response from the ministry. They did not have an opportunity with the committee in the other place, but they did have that opportunity here, and I salute my colleagues on the Standing Senate Committee on Banking, Trade and Commerce.

After weighing the pros and cons of delay, we may not have given them the results that they wanted, but we did, through our colleagues in the Senate Banking Committee, at least provide a hearing. The senators did call back representatives of the government for further explanation. If nothing else, the First Nations' testimony before the Banking Committee of the Senate, and the concern expressed by some members of the committee, did receive attention.

I gather that the minister and his officials thought that the bill would be dealt with in one meeting, not two. There seemed to be some nervous faces from the Department of Finance, I am told, at the end of the first meeting of our Banking Committee. They were nervous, no doubt, not only because of the testimony, but also because of the obvious discomfort of some members of the committee.

I note that within a few days of the committee meeting, the Minister of Finance suddenly replied to that June letter. Through June, July, August, September and October, there had been no response. Once the matter was raised in committee, suddenly the Minister responds. Bravo to the members of the Banking Committee.

I point out that the minister's letter outlines the reasons for the policy change, points to the strong support of the industry, says that he appreciates their concern and then states that he has instructed his officials to engage in discussions with the Indian Resource Council of Canada at their convenience. Obviously, for First Nations people who have a serious concern, there is no leverage after the bill is made law. Therefore, those discussions should have been held before the bill was introduced.

Let me conclude by saying that this is a good example of the second chamber playing a fulfilling role — stakeholders who have not had the opportunity to be heard receiving that opportunity. As a result, we end up enacting better legislation because our system is bicameral.

Hon. Charlie Watt: Honourable senators, I wonder if Honourable Senator Kinsella would accept a question?

Senator Kinsella: Yes.

Senator Watt: Honourable senators, I have not clearly examined whether this particular bill would have an implication on the First Nations. Listening to the argument put forward by Senator Kinsella, I am led to believe that not only were they not informed, but it seems that they were denied access to make their case in the committee. Is that what you are saying, Senator Kinsella?

Senator Kinsella: I am saying, honourable senators, that in the development of this government legislation, a community concerned with a particular sector of the economy attempted to have a dialogue with the ministry and was ignored. A bill was introduced, examined in the other place and went to committee in the other place. This community, which has a valid set of interests precisely on the matter that was contained in the bill, sought to be heard but was not successful in being heard in the other place.

The good news is that because we have an upper chamber that does review legislation and does go through the three steps, including study in committee, we were attentive to this lacuna and provided an opportunity for these important witnesses to be heard and to express their view. I think the bill should be adopted at third reading.

• (1030)

I want to place on the record, however, that honourable senators on the Standing Senate Committee on Banking, Trade and Commerce did the right thing. We should always learn from

everything we do. I would hope that in the future when proposed legislation is first brought forward, there would be the kind of consultation that is becoming more and more the way of conducting public business in Canada, particularly as it affects First Nations. In respect of the legislative process, I think that honourable senators set a good example.

[Translation]

Hon. Aurélien Gill: Honourable senators, I would also like to congratulate the members of the Standing Senate Committee on Banking, Trade and Commerce for their sensitivity and respect toward the representatives of the first nations, and all the senators who have become aware of the Aboriginals' situation. Senators are increasingly aware of the situation in the first nations and respect them all the more.

To date, there has been some neglect since the arrival of the Europeans. Nonetheless, exceptional efforts are being made in this chamber to make up for lost time. We must recognize this and, in particular, congratulate those who have become personally involved.

Work in raising awareness has to begin in the other place. Unfortunately, the lack of awareness in the other place is such that most of the legislation on Aboriginals end up being challenged before the courts. Some people are not doing their job.

Our communities need infrastructure. If restrictions are imposed and obstacles raised for the few economic activities that exist in Aboriginal communities, then to whom do you expect them to turn if they want to get out of this mess one day? It is time to open up opportunities for Aboriginals with respect to economic development.

Once again, I would like to thank the honourable senators for their kindness toward and respect for aboriginals.

[English]

Senator Moore: Honourable senators, I would like to put a couple of things on the record in respect of the intervention of Senator Kinsella and the concerns expressed by Senators Watt and Gill.

Regarding the request to appear before the committee in the other place, we were told on Wednesday, November 5, in the hearings of the Standing Senate Committee on Banking, Trade and Commerce, that that request was made after those hearings concluded. It was not the case that the hearings were in session when they asked to appear but were denied the opportunity. They made the request; and we were told that in evidence last Wednesday.

[Senator Kinsella]

With regard to the consultation process, the department did conduct a series of open public meetings across the country for all interested parties — native and non-native. I am confident that the Indian Resource Council of Canada was aware of what was happening because, on October 8, 2003, we heard in evidence that they passed a resolution of the council to make an intervention to the Banking Committee.

I will clarify the matter: This element has caught the attention of honourable senators in respect of native lands. I do not want Bill C-48 to be characterized as targeting native lands that may hold resources of value. The bill applies to all non-Crown landholders, native or non-native. Last week, with respect to the Victor Buffalo case, we heard from legal counsel for the Department of Finance in committee. Ms. Levonian told the committee that Bill C-48 does not impact on that case.

Hon. Marcel Prud'homme: Honourable senators, I attended the meeting under the chairmanship of Senator Kroft. I accept the remark of Senator Gill, "la gentillesse," but as for the competence, I will explain.

The fact remains that representatives of the IRC wanted to be heard by the House of Commons committee. The Honourable Senator Moore said that they might have put their request too late. They were unhappy and showed their displeasure. I believe that I attended those two meetings, and I recall information about a letter that was written by the Indian Resource Council to Mr. Manley on June 17, 2003, to which they never received a reply.

It was only after we heard from the IRC witness Mr. Roy Fox, President of the IRC, at the November 7 meeting chaired by the Honourable Senator Kroft that the group received a reply. They received two letters in reply: one dated November 3 and one dated November 4. It took that long for the minister to acknowledge their letter of June 17.

I sat in the other place under Mr. Pearson and under Mr. Trudeau. At that time, if someone stood in caucus and said they had written to the minister on June 17 and had still not received a reply by November 3, the prime minister would have said, "I am sure that this afternoon you will likely receive a reply." — and indeed a reply would be received.

I do not understand the breakdown that happened between June 17 and November 3. Again, when you attack an issue head on you are more likely to cut your losses from the beginning. If you know that the displeasure will grow, then face it head on at the outset.

The witnesses from the Indian Resource Council were unhappy, but at least they were heard by honourable senators at the Banking Committee. I urge honourable senators, and especially the newer senators, to try to remember that people do not expect to win all the time. The frustration lies in not being heard.

• (1040)

I want to thank the chairman, the Honourable senators Moore and Tkachuk, and those on the committee for making room for these people who wanted to be heard. They are not yet totally happy. They still feel that something is wrong. That which is wrong, as our chairman said, could still be corrected in the future.

I look at him. I do not think I am misinterpreting what happened. If there were any wrong done to some people, it could be corrected in the future. That is the best answer that the Senate committee can offer to your attention for quick approval.

I repeat again and again: Canadians do not expect to win on all of the issues all of the time. However, they feel extremely frustrated when they are not heard, especially the First Nations, who are more sensitive. I know that Aboriginal representatives hit a nerve with many parliamentarians. I always call a spade a spade, but they demand a little bit more patience and understanding.

Honourable senators, I was glad to sit on this committee. I am pleased by the good words of Senator Gill who said that at least they were heard in the Senate. That is exactly why the Senate exists. More and more, we will have to say to Canadians that they have a tendency to go very fast in the other chamber.

I met a very prominent minister last night in the dining room. His pleasure was to say to everyone around that he had sent 17 bills to us in the last few weeks. It will be tough luck some day. We need to find one who can express himself or herself well in English or French to appear on television and explain the system. Seventeen bills were dumped on us at the last minute! He expects them all to be passed?

That is similar to the practice in the National Assembly in Quebec. They wait until December 20 to deal with some matters, and they make people sit all night. The spirit is there, as is the other spirit. Bills get lost and bills get passed without time to study them. It frustrates people who are not heard.

The role of the Senate was appreciated, even though the Aboriginals are not totally happy. The topic is still controversial. People are upset with Minister Nault. They did not get replies to their letters. It is unbelievable. If we were to do that even with the limited staff that we have, we would be criticized.

I do not answer people by writing. I call. It is easier, faster and more precise.

Honourable senators, I will vote for this bill as soon as my chairman stands to speak. I can see now that he is building toward that and is wondering whether I will ever shut up so that he can move passage of that bill. He is too much of a gentleman to say that, but I feel that it might be coming soon.

I am glad to have been part of this study and of giving a chance for these people to be heard.

Hon. Senators: Hear, hear!

The Hon. the Speaker: Is the house ready for the question? I will put the question:

It was moved by the Honourable Senator Moore, seconded by the Honourable Senator Kroft, that the bill be read the third time now.

Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and bill read third time and passed.

PRIVACY COMMISSIONER

MOTION TO APPROVE APPOINTMENT— REFERRED TO COMMITTEE OF THE WHOLE

Hon. Sharon Carstairs (Leader of the Government), pursuant to notice of November 6, 2003, moved:

That, in accordance with Section 53(1) of the Act to extend the present laws of Canada that protect the privacy of individuals and that provide individuals with a right of access to personal information about themselves, Chapter P-21 of the Revised Statutes of Canada 1985, the Senate approve the appointment of Jennifer Stoddart of Westmount, Quebec, as Privacy Commissioner for a term of seven years.

Hon. Marcel Prud'homme: Honourable senators, there is a mistake in the address. It should be Jennifer Stoddart of Montreal, Quebec.

The Hon. the Speaker: I take that as a point of order. My response as presiding officer is that the error is of such a nature that it can be addressed in committee. I understand this matter will be referred to committee.

Senator Carstairs: Honourable senators, Ms. Stoddart has been nominated to succeed Mr. Robert Marleau, whose term as Interim Privacy Commissioner expires on January 1, 2004. The Privacy Commissioner is an officer of Parliament who monitors the federal government's collection, use and disclosure of its clients' and employees' personal information and its handling of individuals' requests to see their records.

The commissioner has broad powers to investigate complaints received from individuals under the Privacy Act and the Personal Information Protection and Electronic Documents Act. The powers of the Privacy Commissioner include the investigation of complaints, the conduct of audits under two federal laws, the publication of information on personal information handling practices in the public and private sector, the conduct of research into privacy issues, and the promotion of awareness and understanding of privacy issues by the Canadian public.

Ms. Stoddart is currently President of the Commission d'accès à l'information du Québec, a position that she has held since July of 2000. She also has experience in positions of increasing responsibility with the governments of Canada and Quebec. Prior to her current government appointment, she served as Vice-President of the Commission des droits de la personne et des droits de la jeunesse du Québec.

• (1050)

In brief, Ms. Stoddart brings with her an excellent reputation for taking into account various perspectives in arriving at her decisions and future directions. I believe she will make a significant contribution and continue the important work started by Mr. Marleau and the government to rebuild the Office of the Privacy Commissioner. I trust that all honourable senators will join me in supporting this proposed appointment.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, I want to say again that I do not like the way the government is handling its business. We were told at the last minute last night and gave leave for a notice of motion, and now we are rushed into judgment on the candidate. The matter of her qualifications is beside the point. We are being rushed into a decision. Why does this need to be done on a Friday, or even next week? Why are we not told that the calendar has been changed? Until that is done, I will continue to protest the way things are being handled here.

That being said, we usually go into Committee of the Whole to receive and have an exchange with officers of Parliament, and I hope that that can be arranged. However, before that is done, perhaps we could have some written information on the candidate. We have nothing but a name and the summary that the Leader of the Government has given us. We must have something tangible in front of us to review, and at the moment we are acting too hastily. I do not understand, and I wish the truth would finally come out.

Senator Carstairs: Honourable senators, it would be this government's position that we would indeed move to Committee of the Whole. I have requested more detailed information on Ms. Stoddart, which I hope to be able to distribute to honourable senators quickly. It would seem appropriate to not go into Committee of the Whole until after we have completed Royal Assent this afternoon.

Senator Lynch-Staunton: I expect that the minimum amount of information we will get will include the act under which she operates. This is an office that, unfortunately, has been terribly soiled and affected, and the morale there is at an all-time low. The proposed appointee has more to do than just protect privacy; she must show that she has the administrative skills to bring this office back to the level of efficiency that the last few months have, unfortunately, dissipated.

I wish to give credit to Mr. Marleau for all his efforts, and we owe him a deep debt of gratitude for taking on that job.

Senator Carstairs: I thank the honourable senator for his comments. I will ask for copies, for all senators, of the act under which the proposed Privacy Commissioner finds her duties and responsibilities.

Hon. A. Raynell Andreychuk: Honourable senators, I wish to voice my objections to the process. We will be going into exactly the same process that led to the appointment of Mr. Radwanski. In light of the Prime Minister's comments that it was our appointment and only his recommendation, and despite the fine credentials that this applicant has and the support that this person should receive from us, the process is so flawed that I do not believe we would be discharging our duties by continuing the same process that leads us to accept someone by a short Committee of the Whole and an observation of that person, if they were to attend here.

It is time we revised our processes and did our job properly. We have as much to account for what went wrong in the Radwanski matter as anyone else. As I pointed out, because the Prime Minister recommended Mr. Radwanski and because he recommended himself to us by saying that he would undertake his duties efficiently and manage appropriately, with no other evidence, we supported the Prime Minister. That is not sufficient in this day and age, and I for one do not believe it is appropriate to appoint someone in this process.

At best, I would abstain, if not oppose, the process.

Senator Prud'homme: Honourable senators will remember that when Mr. Radwanski appeared here, it was very embarrassing, but I thought it was my duty to do what I did. I do not like rubber-stamping what is expected from the Senate. With all due respect to the process, it was very difficult. I demanded and obtained a vote.

I do not like to kick someone when they are down; I am a better fighter than that, so I will not say anything else about the fact that I was proven right. The vote took place, however, and many members felt so strongly about the views expressed by some that they saw fit to leave. More than 40 said yes, but 11 did not, and they were a mixed bag of Liberals, Conservatives and independents. Since Mr. Marleau did not want to be renewed on an interim basis, I would have felt much more at ease if we had been offered an interim commissioner until we had time to go through the same process that we did with Mr. Radwanski.

My question is to Senator Carstairs: Was this motion put to the other chamber in the same manner? Was it discussed, debated, sent to Committee of the Whole or a special committee, or was it just plain rubber-stamped by the government saying that they were pleased to announce that we had a new commissioner for seven years, with no scrutiny? This motion was sent to us close to midnight last night. Senator Robichaud advised us that today it would be on the Order Paper. If you refer to the Orders of the Day, it is No. 3 under Motions.

I do not know how long we will have to debate the issue raised by Honourable Senator Andreychuk. The usual request by Honourable Senator Kinsella is that this officer come here, as we have done for Mr. Phillips, twice, I believe, and for Mr. Radwanski. I say for the second time today that that is the Senate at its best. It is not like the House of Commons, which is informed and applauds and that is the end of the matter. If they had done their duty some time ago, we would not have had the unfortunate incident of forcing a vote here — that has never been done — and seeing results at the end of the day that decide for everyone, including Mr. Radwanski himself. Now that he is down, I will not fight him any further.

We do not know if we will be adjourning. We are like a bunch of kids who are told that if they behave, they will be allowed to go home. Is it possible to know if the process will take place here? I would like a degree of consultation from this officer. I see there is an exchange of paper now.

I would like to know, from either Senator Robichaud or Senator Carstairs, how the process developed in the other chamber. Was there debate on the floor, was there a committee, or was it just an announcement?

Senator Carstairs: If you are asking me a question, then I defer to the Speaker.

• (1100)

The process in the other House involved Ms. Stoddart's appearance before the Operations Committee. The Operations Committee, a new committee in that place, is the committee that investigated Mr. Radwanski. That committee met with Ms. Stoddart earlier this week and made a recommendation to the House of Commons that it accept her nomination. A vote on that matter was taken in the House of Commons yesterday, which is why I could not give you notice prior to that. Our process is that they approve, and then we seek to approve.

Senator Andreychuk: Honourable senators, is it correct that the House of Commons has set up a procedure to analyze the application, compare it to the expectations of the job and then recommend to the other House? Will we receive evidence that there has been scrutiny done in the other place of the candidate's qualifications for the position?

Senator Carstairs: Honourable senators, I can attempt to get for you the transcript of that committee. However, the process is not quite as Senator Andreychuk has identified. The process is that the nomination was put before the House of Commons in exactly the same way as the nomination is being put forward in this chamber. My recommendation will be that we deal with it in Committee of the Whole. Their recommendation was that it be referred to the Operations Committee. Ms. Stoddart appeared as a witness before that committee.

The opposition leadership has asked me for copies of the Privacy Act, which are now being prepared for all honourable senators so that they can, if they wish, examine the duties as set out in that act. Obviously, the Operations Committee would have no right to ask about duties beyond the scope of the Privacy Act.

In terms of the qualifications of the individual for the position, I understand that that was the subject of discussions with Ms. Stoddart, and I assume it would also be the subject of our discussions.

If we do not establish a new committee, and I certainly do not think we need any more committees, I believe that the National Finance Committee should take on the role of ongoing monitoring of officers of Parliament, although it makes perfect sense to me that the Commissioner of Official Languages should report to the Official Languages Committee. In fact, that is where she goes on a regular basis to make her reports. However, for financial scrutiny and that type of thing, I would like our National Finance Committee to take on a greater role.

Honourable senators, I cannot make that decision. The Senate would have to decide, through our rules, that the National Finance Committee should take on this mandate in addition to what is presently called for in our rules for that committee. I do not think its current mandate would prohibit that committee from doing this, but I think it would give it more force and effect if we expanded the mandate to include this.

[Translation]

REFERRED TO COMMITTEE OF THE WHOLE

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, I move:

That the motion not now be adopted but referred to Committee of the Whole later this day.

[English]

Hon. Marcel Prud'homme: Honourable senators, I could not sleep last night, so I had a look at what happened in the House of Commons yesterday. Before we deal with this matter this afternoon, it might be helpful to read the discussion reported at page 9237 in *Debates of the House of Commons* at eleven o'clock yesterday. It reads:

Hon. Don Boudria (Minister of State and Leader of the Government in the House of Commons, Lib.): Mr. Speaker, there have been consultations among all parties in the House and pursuant to the agreement that was made, I think you would find unanimous consent for the following motion. I move:

That Motion No. 134, standing in my name on the Order Paper, is now moved and adopted unanimously.

[Senator Carstairs]

The motion reads:

That, in accordance with subsection 53(1) of the Act to extend the present laws of Canada that protect the privacy of individuals and that provide individuals with a right of access to personal information about themselves, Chapter P-21 of the Revised Statutes of Canada, 1985, this House approve the appointment of Jennifer Stoddart of Westmount, Quebec as Privacy Commissioner for a term of seven years.

[Translation]

The Acting Speaker (Mr. Bélair): Is there unanimous consent to move the motion?

Some hon. members: Agreed.

The Acting Speaker (Mr. Bélair): Is there unanimous consent to adopt the motion?

Some hon. members: Agreed.

(Motion agreed to)

With that, honourable senators, the House of Commons makes Ms. Stoddart an officer of Parliament for seven years.

Hon. Sharon Carstairs (Leader of the Government): With the greatest respect, honourable senators, I do not think that is fair to the Operations Committee of the House of Commons. All members of the House of Commons are represented on that committee. Ms. Stoddart appeared before that committee. Members spent a considerable amount of time with her, as I hope we will this afternoon.

They did not use the Committee of the Whole process, but they did use their committee system. After the committee process, there was unanimous consent to confirm the nomination.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, with regard to the motion, I would like to proffer a suggestion. Perhaps before or after hearing from Ms. Stoddart, if the current acting commissioner, Mr. Marleau, is available, it might be appropriate for him to come before the Committee of the Whole to give us an opportunity to thank him for his work and, indeed, to ask him some questions.

That is simply a suggestion. If he is unavailable, that is fine.

[Translation]

Senator Robichaud: Honourable senators, this is a very good suggestion. We will try to see whether Mr. Marleau can join us this afternoon, given all the circumstances.

[English]

The Hon. the Speaker pro tempore: Is the house ready for the question?

Hon. Senators: Question!

The Hon. the Speaker *pro tempore*: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to.

BILL RESPECTING THE EFFECTIVE DATE OF THE REPRESENTATION ORDER OF 2003

SECOND READING—DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Smith, P.C., seconded by the Honourable Senator Léger, for the second reading of Bill C-49, respecting the effective date of the representation order of 2003.

Hon. Brenda M. Robertson: Honourable senators, I will keep my remarks on Bill C-49 reasonably short. In my other life in the Province of New Brunswick, constituents used to tell me, when the waters got a little muddy, to speak in street language so that they could thoroughly understand what the legislation was about. I guess the water has been muddied in the debate on this legislation. As I was coming over from the Victoria Building this morning with some of my colleagues, I was astounded to learn that some of them believe that this bill has to be passed in order to establish the new constituencies. As they say down east, when you muddy the water, you cannot see the fish.

• (1110)

I do want to speak bluntly about this matter, in street language, so that I can be as clear as possible about this proposed legislation that I identify as pure gerrymandering. We all know what gerrymandering is. In our years of experience, we have grown to know that we do not like it, and it usually has effects that were not anticipated when the gerrymandering took place.

I worry about this. Surely, in our democracy, we know that we should not interfere with the Chief Electoral Officer. Surely we know that. Obviously, however, some people do not know that. They still want to go back to gerrymandering.

Bill C-49 is interfering with legislation that controls the electoral process that is mandated for the Chief Electoral Officer, and we have no business interfering with that legislative process. Prime Minister Pearson understood that. Goodness knows, there are enough countries without democratic processes and without democratic governments where this would be a routine, and it would not matter because they have no respect in so many countries for the democratic process. However, in Canada, surely we have more respect for the democratic process than this.

At present, the Chief Electoral Officer knows by legislation that once the electoral boundaries have been agreed to, he has a full year to prepare for another election: simple as that. There is nothing complicated about it. Those electoral boundaries, including the new boundaries in Alberta, British Columbia and Ontario, were established last August. The Chief Electoral Officer and staff know that they have, by law, a full year to prepare for the next election.

I will give honourable senators some examples of what happens when there is gerrymandering. Some people think gerrymandering is dead, that it is not happening at the local level. My province had a prime example of gerrymandering. It shows what can happen, unintentionally, when you try to do something for a friend in his backyard.

The only problem with the size of the constituencies in my small province of New Brunswick was in the area in which I live, that is, the Greater Moncton area. That is the growth area of the province. That is the engine for growth in southeastern New Brunswick. The federal constituency of Greater Moncton consisted of Moncton, my old hometown of Riverview, a small community, and the town of Dieppe. Dieppe may have become a small city. They may have, and if they have, I apologize for saying that Dieppe is a town. Those three communities make up the federal riding of Greater Moncton.

Let me tell you what happened in the gerrymandering process: Down in Rothesay — and most of you know where Rothesay is, just on the Moncton side of Saint John — there was a push on by influential people to have Rothesay included with Saint John so that a favourite son could run in Rothesay for that general Saint John constituency. That sounds simple. Rothesay is bundled in with Saint John, although it never has been before, but we will stick it in there so that the favourite son can run as a candidate.

I have a daughter who lives in that area, so I keep up to date with what is going on. In the last poll that I looked at from that area, only 6 per cent of the residents of Rothesay wanted to be tied in with Saint John. Thus you have gerrymandering.

As a result of that gerrymandering, in the next adjacent riding, which goes up into Albert County where Riverview is, they had to tag on half of Riverview for the population balance. From Saint John, all the way up to Hampton, and north of Sussex, up the Bay of Fundy, to grab half of Riverview. The other half of Riverview goes in with Moncton. That skews things because Moncton now only takes half of Dieppe, and half of Dieppe goes in with another riding.

Dieppe and Riverview, two small communities, will have two members of Parliament, and probably will never have a chance of getting a member of Parliament living in their constituency. Moncton, which is the engine of growth, will have one member.

The answer to that puzzle, rather than gerrymandering, was to do what the citizens generally recommended: Do what they did in St. John's, Newfoundland: split it in two, so that you have two constituencies in the Greater Moncton area. No, the gerrymandering caused all of that foolishness. It was very frustrating.

There are always consequences when you interfere. That is true not only in the electoral processes but also in life. Many of us here have been around small children. This process that I see going on or trying to go on here reminds me of a small child, about 4:30 in the afternoon, demanding candy. The parent says, "No, you may not have candy right now because dinner will be in an hour and a half." The child throws a temper tantrum and the parent gives in and gives him the candy. When you serve supper, the child has no appetite. Not only is it bad nutrition but it also disrupts the whole family. Around nine o'clock at night, the child gets hungry again, instead of being asleep. Everything like this has a consequence. This is what we are doing.

I suspect I know who is throwing the tantrum over in the other place. Someone is throwing a tantrum. This is a wrong piece of legislation. It is tampering with the electoral process.

If this bill passes and some leader is foolish enough to call an election for April 1, he will lose those seats out West and in Ontario, but that is not the fault of this chamber, that is the leader's fault. He will do that at his peril. A leader comes in with enough baggage without further alienating parts of the country. It is not this bill that will alienate parts of the country; it is this process that is being forced upon us. It is truly wrong. There is nothing more sacred in our system than to leave the electoral process over there and let the elections officer do his thing.

We have had so many elections. We no longer wait four years. We have seen elections where there has not been time for staff to man polls in the cities, and where the polls are not set up properly and the returning officers are having trouble. If this bill goes through, there will be more problems, because there is not enough time for the Chief Electoral Officer to get all of those constituencies organized. You thought you had problems the last time around — and we all saw those problems, with the names that were left off the voter list. I do not have to mention the problems; honourable senators are familiar with the electoral process. The problems will be compounded on the next election day. There is not adequate time for the Chief Electoral Officer and his staff to prepare for an election called for April 1. All it is doing is catering to a group of people who think they own the country, and they do not own the country. The people own the country.

• (1120)

It is really quite disgusting. It is wrong and you should know better.

[Senator Robertson]

I will not say any more at the moment, honourable senators. I know we have a busy day before us. I feel very strongly about this issue. I am sorry for what you are trying to do because it belittles this chamber.

Hon. John Lynch-Staunton (Leader of the Opposition): Honourable senators, would the Honourable Senator Robertson take a comment and a question?

Senator Robertson: Yes, honourable senators.

Senator Lynch-Staunton: My comment has to do with Senator Robertson's examples of gerrymandering. The best one I have heard took place in a province that I will not identify. The line divided a six-storey apartment building in two. As a result, the first three floors were in one riding and the top three were in another. There was careful and meticulous defining of boundaries in those days!

The honourable senator mentioned that the one-year delay was put in place to ensure that the Chief Electoral Officer had all the time needed to put everything in place, in particular the polling stations, which is the last step. Once the boundaries are known and confirmed, defining the polling stations is the last step. Today, that is easy to do with advanced technologies, but in those days it was hard.

Will the honourable senator not confirm that the one-year delay was put in place not just to give time to the electoral officer but to give time to all the political parties, even the major one, the one with the most volunteers and personnel, and that it was felt that that one-year delay was just right? I am convinced that for many parties, certainly ours, the six months will be very difficult to abide by, particularly as all parties must abide by the new election financing measures, which come into effect January 1. The ridings that have not abided by them will not receive certain benefits. There is a double requirement now, which is why it is essential that the one-year delay be maintained.

Senator Robertson: Honourable senators, I could not agree more with the comments of the honourable senator. It affects all parties. However, it affects the people more. It is the people who will be negatively affected by this. If the parties cannot function properly, if they do not have enough time, and if the Chief Electoral Officer does not have enough time, it is the people who will be in trouble.

Hon. David P. Smith: Honourable senators, could the honourable senator explain to us her understanding as to why all her Progressive Conservative colleagues in the other place, save one member from Manitoba, voted in favour of this bill on third reading, including her New Brunswick colleagues? Can the honourable senator explain why they saw fit to vote in favour of this bill?

Senator Robertson: Honourable senators, I would never try to explain why those in the other House do what they do. I have enough trouble trying to understand what we do here. Sometimes, it is not pretty. Sometimes, when you are in a minority, they vote for measures because they are tired of arguing and debating and they know they will lose. I am not sure; you will have to ask them. I do not agree with them.

The Hon. the Speaker: Senator Robertson's time has expired. Is the honourable senator asking for additional time?

Senator Robertson: Not necessarily.

The Hon. the Speaker: I will take that as a no.

Hon. J. Michael Forrestall: Honourable senators, I did wish to speak. However, upon hearing the new suggestions of my leader, I think I will take more time to look into the financial implications of this bill.

May I move the adjournment of the debate?

The Hon. the Speaker: Honourable senators, it was moved by the Honourable Senator Forrestall, seconded by the Honourable Senator Stratton, that further debate be adjourned to the next sitting of the Senate.

In anticipation that there may not be agreement on this, let me put it this way: Will all those in favour of Senator Forrestall's motion to adjourn the debate please say "yea"?

Some Hon. Senators: Yea.

The Hon. the Speaker: Will all those opposed to the motion please say "nay"?

Some Hon. Senators: Nay.

The Hon. the Speaker: I believe the "nays" have it.

And two honourable senators having risen:

The Hon. the Speaker: A vote is required. As we all know, a one-hour bell is required. I am looking to the chamber for some direction, if it is available, given the fact that we have an order from the house to vote at 12:30, and we have Royal Assent at one o'clock.

Hon. Terry Stratton: Honourable senators, we agree to have the vote at 11:50.

The Hon. the Speaker: Honourable senators, the bells will ring at twelve noon for the vote to be held at 12:30. Following the vote, the bells will continue to ring until —

Hon. Sharon Carstairs (Leader of the Government): Your Honour, the agreement is that the bells will begin to ring now for this vote. They will stop ringing at 11:50, at which point a vote will be taken.

The Hon. the Speaker: I thank the Honourable Senator Carstairs for clarifying that for the Chair.

The vote will be at 11:50 a.m. Call in the senators.

Debate suspended.

• (11:50)

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, before I put the question, I am obliged to advise you that, while the bells rang in all the regular places, unfortunately, the bells did not ring in the Victoria Building.

Some Hon. Senators: Oh, oh.

The Hon. the Speaker: Shall I proceed?

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I became aware of this about 15 minutes ago. I know that message was sent to the whip's office on the other side. We sent a general e-mail to everyone in all their offices, no matter where they were located. We also asked the security guards to knock on every senator's door in the Victoria Building to inform them that a vote was being held.

Hon. John Lynch-Staunton (Leader of the Opposition): I hope the correction will be made for the next vote. It is essential that those bells ring, Your Honour.

BILL RESPECTING THE EFFECTIVE DATE OF THE REPRESENTATION ORDER OF 2003

SECOND READING—DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Smith, P.C., seconded by the Honourable Senator Léger, for the second reading of Bill C-49, respecting the effective date of the representation order of 2003;

And on the motion of the Honourable Senator Forrestall, seconded by the Honourable Senator Stratton, that further debate be adjourned to the next sitting of the Senate.

The Hon. the Speaker: Hearing no objection, I will put the question.

Will those in favour of the motion to adjourn debate please rise?

Motion negated on the following division:

YEAS
THE HONOURABLE SENATORS

Comeau	Lynch-Staunton
Forrestall	Rivest
Kinsella	Stratton—7
LeBreton	

NAYS
THE HONOURABLE SENATORS

Bacon	Kroft
Banks	LaPierre
Bryden	Lapointe
Callbeck	Léger
Carstairs	Losier-Cool
Chalifoux	Maheu
Chaput	Milne
Christensen	Moore
Corbin	Morin
Day	Pearson
De Bané	Pépin
Downe	Phalen
Fairbairn	Plamondon
Finnerty	Poulin
Fraser	Poy
Furey	Ringuette
Gauthier	Robichaud
Gill	Rompkey
Grafstein	Sibbeston
Graham	Smith
Harb	Sparrow
Hubley	Trenholme Counsell
Jaffer	Watt
Joyal	Wiebe—49
Kenny	

ABSTENTIONS
THE HONOURABLE SENATORS

Cools	Prud'homme—2
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The Hon. the Speaker: Honourable senators, it is approximately four minutes before twelve when we, by order, must call in the senators. Do you wish to continue with debate on this bill for the next few minutes?

Hon. Senators: Yes.

Hon. J. Michael Forrestall: Honourable senators, I had it at the back of my mind that I would like to go back and review the degree to which any action that we would contemplate here might do two things: First, to deny access to these additional seats to people in other parts of Canada; and, second, as mentioned by the Leader of the Opposition in the Senate just a short while ago, that there might be some financial impact. I wanted to review those

two things once again because I do not believe that there is such an impact. In fact, had there been opportunity and time, I would have attempted to make a case for re-examining the need for a cap on the absolute number of members of Parliament.

The other place grows and will continue to grow because it is attached to a formula. It has no end, although there is a capacity to end it. Over the next few years, it is a question that should seize our attention: that some other method of adjusting the numbers of members of Parliament from time to time should be implemented so that we might preclude and avoid the problems that we are getting into. For me, tomorrow will be my anniversary of spending 38 years in that chamber and in this one, and never have I seen redistribution go through without charges of gerrymandering and without corruption innuendo, and so forth.

Those few words are to indicate that I have those three basic concerns. First, I do not believe it will interfere with anything. The seats are there; they will come into being. Second, there is no reason, other than to satisfy Mr. Martin, to speed the electoral process of change. Third, perhaps we should take a look at the whole process again.

Debate suspended.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable Senator Forrestall, I am sorry to interrupt you. However, it being twelve noon, pursuant to the order adopted by the Senate on November 6, 2003, I must interrupt the proceedings for the purpose of putting the question on the motion in amendment of the Honourable Senator Bryden to Bill C-34.

The bells to call in the senators will be sounded for 30 minutes. The vote will take place at 12:30 p.m.

Call in the senators.

• (1230)

PARLIAMENT OF CANADA ACT

BILL TO AMEND—THIRD READING—
MOTION IN AMENDMENT ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C., for the third reading of Bill C-34, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence.

On the motion in amendment of the Honourable Senator Bryden, seconded by the Honourable Senator Sparrow, that Bill C-34 be not now read the third time but that it be amended,

in clause 2,

(i) on page 1, by replacing lines 8 to 27 with the following:

"20.1 The Senate shall, by resolution and with the consent of the leaders of all recognized parties in the Senate, appoint a Senate Ethics Counsellor."

(ii) on page 2, by deleting lines 1 to 49,

(iii) on page 3, by deleting lines 1 to 11.

Motion in amendment agreed to on the following division:

YEAS THE HONOURABLE SENATORS

Andreychuk	Kenny
Angus	Keon
Atkins	Kinsella
Bacon	Kroft
Baker	LeBreton
Banks	Lynch-Staunton
Beaudoin	Maheu
Bryden	Meighen
Cochrane	Moore
Comeau	Murray
Cools	Pépin
Corbin	Pitfield
Di Nino	Poulin
Dood	Prud'homme
Eyton	Rivest
Forrestall	Robertson
Furey	Sibbeston
Gauthier	Sparrow
Gill	Spivak
Grafstein	Stollery
Gustafson	Stratton
Johnson	Tkachuk
Joyal	Watt—47
Kelleher	

NAYS THE HONOURABLE SENATORS

Biron	LaPierre
Callbeck	Lapointe
Carstairs	Léger
Chalifoux	Losier-Cool
Chaput	Milne
Christensen	Morin
Day	Pearson
De Bané	Phalen
Downe	Plamondon
Fairbairn	Poy
Finnerty	Ringuette
Fraser	Robichaud
Graham	Rompkey
Harb	Smith
Hubley	Trenholme Counsell
Jaffer	Wiebe—32

ABSTENTIONS THE HONOURABLE SENATORS

Nil.

BILL RESPECTING THE EFFECTIVE DATE OF THE REPRESENTATION ORDER OF 2003

SECOND READING—DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Smith, P.C., seconded by the Honourable Senator Léger, for the second reading of Bill C-49, respecting the effective date of the representation order of 2003.

Hon. J. Michael Forrestall: Honourable senators, I will be somewhat brief in my comments and observations. I had sought a little more time. Because of illness in my office, my notes are locked away. I have not yet been around here long enough to enjoy the confidence of everybody with the right of access to those notes, so bear with me.

As nearly as I can gather from a perusal of the bill, nothing would happen if, for example, we did not pass this bill until late July or early August of the year 2004. Therefore, I am not seized with any sense of urgency, other than private reasons, for bringing it on earlier.

I recite the message to the government from several interveners, and repeat the fact that government financing and assistance in this regard will be somewhat set askew. In other words, we may very well wind up with two or three agendas for funding, all of which could be legal, posing serious problems for the Chief Electoral Officer and the provider of funds.

• (1240)

I have hesitations with respect to this matter in that regard. If someone could explain to me just precisely what it is that Mr. Martin or others hope to gain from this desire to change the implementation date from one year to six months, then I would be very pleased to listen.

I wanted to wind up with what I touched on earlier, which has to do with the various formulas that have been floated in the last 20 years with respect to the growing of the House of Commons. We are now at 300 MPs, more or less. The formula, by the time some of the younger members of this chamber reach retirement age, will be approaching 360. That is a quick calculation done in the last 20 minutes or so — do not take it to the bank. However, it makes the —point. Where does the growth of the number of members of Parliament who sit in the House of Commons end? Where will we seat them?

There are those who seriously advocate an elected Senate. We are 105. Can you imagine the authority? Any senator with four or five MPs and 15 or 20 MLAs or MNAs would be a very powerful politician in our structure, just as federal senators in the United States are very powerful. Indeed, they are seats of powers onto their own.

If things get out of whack, there is a sense of losing control or not doing things in an orderly fashion. There is an old saying that the worst form of pollution is the discarding of a good idea before its time, before it has been used to its full advantage to the benefit of people. This is one of those situations.

We have an enviable process that has withstood many attacks, many attempts to circumvent it, and it has not been found wanting. I would suggest that honourable senators might want to think for a moment before we finally vote on this matter. It is not only about whether or not to help one or two members of Parliament, notwithstanding how powerful one of them may be in a day or so. Think, rather, of the long-term impact of continuing a process and a system of growth or change that undergoes a very exhaustive study before it happens.

Indeed, it has been my experience that changes to the electoral boundary system have enjoyed community input on every occasion. They have stimulated interest in sustaining community identification. What would little girls from the north side want to do with those bad fellows from over in the bay? I do not think they would want that at all. Little boys from Sheet Harbour rarely go up into Upper Musquodoboit, except to the dances once a month. They stay in their own community. They shop in their own community. There is a sharp division line between going to Antigonish for your purchases or going to Dartmouth, Halifax. You go across a little bridge, and everybody goes east on this side of the bridge and everybody comes back west. These forces are there, and they are natural.

However, there is nothing in that that I can relate to this desire to bring the matter on by six months. In the absence of any facts and statistics that I have with respect to how we grow the Parliament of Canada, how we treat the numbers as we try to leave a collective legacy, I think we should think twice. Unless there is an enormous urgency for this, perhaps we should stand it for four or five years.

Thank you for allowing me to intervene.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): I wonder if the honourable senator would take a question?

Senator Forrestall: Yes, sir.

Senator Kinsella: Senator Forrestall is the dean of parliamentarians from Atlantic Canada and has served many years in the other place. My question is twofold. The redistribution does not affect Atlantic Canada, but it does affect Ontario, British Columbia and Alberta. Given that the redistribution of the new seats is based on the last decennial census, we, as Atlantic Canadians, are quite comfortable, are we not, with these extra seats that would go to Ontario, British Columbia, and Alberta?

Senator Forrestall: Yes, of course, you are right. I am not arguing that anything that is now in place be changed at all. I am just suggesting that when we come to the next generation of growth, that we pause. If there is something that we can do with this — for example, putting the six months back to the one year — then we leave a process in place. I suggest it should perhaps be there for another full term — another four, five, six years, at the most — and then be re-examined.

The mid-term census will be along, and then we will be into the next decennial census. At that time, we might begin to look at rethinking the formula that grows the Parliament of Canada.

We are fine. What is happening now does not affect us. I discern no one in the debate so far opposed to the additional, and needed, seats in those parts of Canada.

The Hon. the Speaker: I am sorry to interrupt, honourable senator, but your 15 minutes have expired.

Senator Forrestall: I would request leave to continue.

Hon. Senators: Agreed.

The Hon. the Speaker: Leave is granted.

• (1250)

Senator Kinsella: I raise this second question as a senator from the Maritime division under the constitution. Is it not true that one of the elements that demonstrates the great wisdom of those who gathered in Charlottetown to found this great land of ours and to propose a system of governance under the Westminster model, would ensure that the exercise of power in Parliament would be as balanced as we can make it and, therefore, the members of the House of Commons would be selected on the basis of population? However, the Fathers of Confederation said that a demographic movement could occur from one region to another across the country. Indeed, of the 301 ridings in Canada today, 103 are in Ontario. We do not begrudge that, obviously, from a demographic point of view, because the major concentration of the population is located in Ontario. The honourable senator comes from Nova Scotia and I come from New Brunswick. Neither province has a large population.

The Fathers of Confederation were seeking to set a system of governance in place on the Westminster model for Parliament and so they created this chamber. I know that many honourable senators would like to see the method of selection of members in this chamber modified. Myriad suggestions have been made over the years as to how that might be done.

I do not think there have been many solid arguments on the importance of the Senate in respect of the balance of power in Parliament. Part of that balance is created by the election of members to the House of Commons on the basis of population. The numbers from the Atlantic region — Newfoundland and Labrador, Nova Scotia, New Brunswick, and Prince Edward Island — on a purely demographic basis, would fall below the numbers that are currently in the House of Commons because of the wisdom of the founders of this great land and system of governance. The Fathers of Confederation said that there needed to be a balance between the number of senators from Atlantic Canada and the number of members of Parliament.

What would Senator Forrestall say to those who come from more populace regions of the country that we have a specific number of members in the House of Commons because of the number of senators that we have, which has been laid out in the Constitution? If we chose the number of members to the House of Commons on the basis of the census only, we would have far fewer member representatives in the House.

Senator Forrestall: Honourable senators, that would be someone else's problem because I will be long gone. I have given this some thought, and I recognize that the growing of Parliament causes many problems and difficult decisions. I enjoyed the debates of Mr. Allen MacEachen and Mr. Bob Stanfield — two easterners — on this issue. When they spoke, it was difficult to discern whether they were from British Columbia, Alberta or Nova Scotia because they were nationalists. They saw the whole country and the areas of disproportionate rate of growth in the central parts. They devised a modest formula to increase the basic representation, in other words to increase the number of people per riding faster than the growth in the number of ridings. That has served us well and it still does.

After the next decennial census, Parliament will have to deal with this either from within or by way of outside consultants. We must look at other jurisdictions to learn how the problem has been solved elsewhere. I do not think we would want to change to a great extent until after the next decennial census.

The Hon. the Speaker: Honourable senators, I am sorry to interrupt the debate but it is nearing the time for Royal Assent.

Debate suspended.

VISITORS IN THE GALLERY

The Hon. the Speaker: Before I leave the chair, I would draw the attention of honourable senators to the presence of Mr. Vernon Theriault, Westray miner and recipient of the Medal for Bravery; Mr. Peter Boyle, President, Local 343, United Steelworkers of America; Ms. Del Paré, miner; Mr. Dennis Deveau, Legislative Director, United Steelworkers of America; and Mr. Allan Martin and his wife, Debbie, representing the families of the 26 miners who died at Westray, one of whom was Allan's brother, Glenn Martin. Welcome.

Is it your pleasure, honourable senators, that the Senate do now adjourn during pleasure to await the arrival of Her Excellency the Governor General?

Hon. Senators: Agreed.

The Senate adjourned during pleasure.

• (1300)

[Translation]

ROYAL ASSENT

Her Excellency the Governor General of Canada having come and being seated on the Throne, and the House of Commons having been summoned, and being come with their Speaker, Her Excellency the Governor General was pleased to give the Royal Assent to the following bills:

An Act to amend the Criminal Code (criminal liability of organizations) (Bill C-45, Chapter 21, 2003)

An Act to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts (Bill C-25, Chapter 22, 2003)

An Act to establish the Canadian Centre for the independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts (Bill C-6, Chapter 23, 2003)

An Act to establish Holocaust Memorial Day (Bill C-459, Chapter 24, 2003)

An Act to amend the Canadian forces Superannuation Act and to make consequential amendments to other Acts (Bill C-37, Chapter 26, 2003)

An Act to amend the statute law in respect of benefits for veterans and the children of deceased veterans (Bill C-50, Chapter 27, 2003)

An Act to amend the Income Tax Act (natural resources) (Bill C-48, Chapter 28, 2003)

An Act to amalgamate the Canadian Association of Insurance and Financial Advisors and The Canadian Association of financial Planners under the name The financial Advisors Association of Canada (Bill S-21)

The Honourable Peter Milliken, Speaker of the House of Commons, then addressed Her Excellency the Governor General as follows:

May it please Your Excellency.

The Commons of Canada have voted certain supplies required to enable the Government to defray the expenses of the public service.

In the name of the Commons, I present to Your Excellency the following bill:

An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004 (*Bill C-55, Chapter 25, 2003*)

To which bill I humbly request Your Excellency's assent.

Her Excellency the Governor General was pleased to give the Royal Assent to the said bill.

The House of Commons withdrew.

Her Excellency the Governor General was pleased to retire.

• (1310)

[English]

The sitting of the Senate was resumed.

BUSINESS OF THE SENATE

The Hon. the Speaker: Honourable senators, before I take my seat I would like to remind honourable senators that the tradition of a Speaker's reception following Royal Assent is still in place, and honourable senators are welcome to participate in a light lunch, which is available in the Speaker's chambers in the presence of our guests from Westray and the Governor General.

BILL RESPECTING THE EFFECTIVE DATE OF THE REPRESENTATION ORDER OF 2003

SECOND READING—DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Smith, P.C., seconded by the Honourable Senator Léger, for the second reading of Bill C-49, respecting the effective date of the representation order of 2003.

Hon. John Lynch-Staunton (Leader of the Opposition): May I ask a question of Senator Forrestall?

When this bill goes before, I assume, the Legal Committee, one of the key witnesses will be the Chief Electoral Officer. I intend to take advantage of his presence to ask him his comments on the success of the new voter registration system as compared to the old enumeration system. Some of us maintain that, while more costly and more difficult to implement, the old enumeration system at least was more complete in drawing up electoral lists because the onus was on the government to find enough people to go from door to door, to leave reminders and then to send cards indicating to what polling station voters were to attend.

Under the present system, it is up to the individual to register, and if a voter changes ridings and does not so advise, or the electoral officer is not so advised through information available from provinces or through ticking off the little box on their income tax form, it could be that many people are left behind.

• (1320)

I was told that in the last Nova Scotia election, which used the permanent voters list, many people were left off or listed in the wrong ridings, and that there were even deceased who were listed.

Does Senator Forrestall have a view on which system we should be implementing to ensure that everyone eligible gets on the list?

Hon. J. Michael Forrestall: I thank Senator Lynch-Staunton for that question. There is evidence that suggests a workable number at which you can begin to automate voters lists, and it is not 20 million or so, the number of voters now in Canada. It is closer to over 100 million, when financially it becomes almost impossible to avoid it. Of course, we are nowhere near that. Some jurisdictions are trying various forms of automation to see what might work and where some of the major problems lie, but we are nowhere near the need for automated voting or permanent lists, as they are sometimes known.

Indeed, I think the Chief Electoral Officer could tell you about the cost to those who are left off. Speaking of gerrymandering, I know of a situation where 20 polls were left out. Those people had no place to vote and did not get to vote. It cost them the last election.

We are still many years away from an economic urgency to "electronify" and establish permanent voters lists, unless someone can come up with a better system.

The system in the United States is so foolishly out of date that probably only 60 per cent of the people there are enfranchised, for whatever reason. It is their own fault, but the rest are disenfranchised.

A good country is one in which citizens live without really thinking about government from day to day. They do not want to be preoccupied with the mechanics of something even as fundamental as their franchise. They want a good system in place, one with which they are familiar, that they know works and that they can, by and large, trust. When you start tampering with things this fundamental, you are encouraging and inviting enormous problems, not to mention, until it is economically feasible, enormous cost.

I would counsel against it. In the good old-fashioned way of door-to-door enumeration, representatives of at least the two parties having obtained the largest number of votes in the previous contest are present to register the voters in the home. When there is no response at a home, they are obliged to go back and to go back again. Good enumerators will keep going back until they are satisfied that the list is as complete as possible. Beyond that, any good candidate has a committee working those lists hard, as I did for 25 years. No one was left off in Dartmouth.

I can do nothing other than suggest to you that in your conversation with the Chief Electoral Officer you tell him that there are people with reservations about permanent voters lists at this time. When we have 200 million or 300 million people, we should consider it.

Hon. David P. Smith: Could Senator Forrestall explain to us why, in opposing this bill, he disagrees with the position taken by the leader of his party, a fellow Nova Scotian from the PC caucus, and also Scott Brison, another colleague from Nova Scotia, both of whom, on third reading of the bill, voted for it in the House?

Also, perhaps he could tell us why the Senate should tell the House that, although four of the five parties in that place supported this bill, we know better as to when this bill should come into effect, as well as the basis of his disagreement with his party leader.

Senator Forrestall: I have a previous engagement with Her Excellency the Governor General, at which perhaps Senator Smith would care to join me.

In response to his question, one day I will ask him where all the miscommunications arise between this chamber and the other with respect to government authority.

Honourable senators, perhaps we should not keep Her Excellency waiting too much longer than we have. I am rather old-fashioned about these matters.

[Translation]

Hon. Gerald J. Comeau: Honourable senators, I have listened attentively to the questions that were raised concerning this bill. I thought it was a bill to advance the date of the election. When I heard the concerns of various senators, I told myself that it required more thought.

The honourable senators who have examined this bill in depth have convinced me that we should not proceed too rapidly with it. It is the Senate's role to give sober second thought to all bills.

The honourable senators who have examined this bill have raised concerns with respect to Elections Canada. Senator Lynch-Staunton raised a point that has worried me; that the Chief Electoral Officer had sent a letter to the parties suggesting an earlier election date.

• (1330)

The leader of our party has dealt with that more thoroughly. One thing bothers me even more is that recently, in this chamber, we have begun to pass bills with a majority — there is nothing wrong with that, since the majority wins in elections, and we must accept that — but a great many of the newer senators do not seem to be aware of the consequences of their votes for or against bills. Many of the new senators seem to be prepared to vote blindly on decisions that will change the very nature of the Senate and of our country, without realizing what is at stake.

It is beginning to worry me, because we do not appear to be listening to the people with a thorough knowledge of the issues raised by the bills we are considering. For example, we recently considered the bill on cruelty to animals. At the beginning I was in favour of it, and later we listened to the concerns raised by our Aboriginal friends from the North. They convinced a number of us that we should not move too quickly in passing legislation. That is the beauty of the Senate; here we see people who have vast knowledge and experience that some of us do not have.

In this case, concerns were raised by Aboriginal people. At first, Senator Beaudoin and myself were in favour of the bill, but we started listening to them and we were no longer so sure. The same thing happened with the ethics bill. I listened to one of our colleagues, one whom I thought had considered the issue thoroughly, who told us this week that we should pass the bill because a reporter from the *Hill Times* had written an article and the bill had to be passed quickly. That is nonsense. I do not even know if this reporter ever heard of the Senate, and we are expected to pass a bill just because someone from the *Hill Times* says so.

In addition, the underlying reason for passing the bill as quickly as possible was to address a perception problem. That, in a sense, is what Senator Carstairs was proposing. She must think that Canadians are clueless, that they are content to have us tackle things superficially, that because we have an ethics bill, all is well. Fortunately, senators like Senators Furey, Joyal, Grafstein, Beaudoin, Nolin and others, have extensive experience and have demonstrated that there were problems with this or that bill.

Some, like me, may not, at first, have been aware of all the implications and, all of a sudden, were made to realize that we should not be rushing matters.

Next week, Paul Martin will become the new leader of the Liberal Party. It will be a bit odd to have a Prime Minister who is not the leader of the party and a leader who is not the Prime Minister. The future Prime Minister wants to be able to call an election any time he wants. We are basically rushing a bill through so that Mr. Martin can call an election when he pleases.

That is not what we are here for. We are here to serve Canadians.

[English]

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I want to be helpful to the deputy Leader. We have agreement that we will have Committee of the Whole. There is a practical problem that we have to put the tables in, et cetera. As we cannot allow strangers in the place, I recommend that we suspend. That would also give an opportunity for those of us who would like to greet Her Excellency as well. I move that the house suspend until two o'clock.

Senator Lynch-Staunton: Honourable senators, I would suggest two o'clock or the time it takes for these gentlemen to finish their work.

[Translation]

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, it was not my intention to interrupt the Honourable Senator Comeau, who was in the midst of giving a speech. I will be at the House's disposal once he has finished.

[English]

Senator Carstairs: Question!

[Translation]

The Hon. the Speaker pro tempore: Is it your pleasure, honourable senators, to suspend the sitting until 2 p.m. this afternoon?

The sitting was suspended.

• (1400)

The sitting of the Senate was resumed.

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Smith, P.C., seconded by the Honourable Senator Léger, for the second reading of Bill C-49, An Act respecting the effective date of the representation order of 2003.

Hon. Gerald J. Comeau: Honourable senators, since our witnesses are ready to appear before the Committee of the Whole, I move adjournment of the debate.

The Hon. the Speaker pro tempore: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

On motion of Senator Comeau, debate adjourned.

[English]

BUSINESS OF THE SENATE

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, I move that the Senate do now resolve itself into Committee of the Whole to hear witnesses with respect to the appointment of the Privacy Commissioner.

The Hon. the Speaker pro tempore: Is it agreed, honourable senators?

Hon. Senators: Agreed.

Motion agreed to.

[Translation]

PRIVACY COMMISSIONER

MOTION TO APPROVE APPOINTMENT OF JENNIFER STODDART—CONSIDERATION IN COMMITTEE OF THE WHOLE

On the Order:

That, in accordance with Section 53(1) of the Act to extend the present laws of Canada that protect the privacy of individuals and that provide individuals with a right of access to personal information about themselves, Chapter P-21 of the Revised Statutes of Canada 1985, the Senate approve the appointment of Jennifer Stoddart of Westmount, Quebec, as Privacy Commissioner for a term of seven years.

The Senate was put into Committee of the Whole in order to receive Jennifer Stoddart on the matter of her appointment as Privacy Commissioner.

The Senate was adjourned during pleasure and put into Committee of the Whole, the Honourable Lucie Pépin in the Chair.

The Chairman: Honourable senators, before we begin, may I draw your attention to rule 83, which states the following:

[English]

When the Senate is put into Committee of the Whole every Senator shall sit in the place assigned to that Senator. A Senator who desires to speak shall rise and address the Chair.

Is it your pleasure, honourable senators, that rule 83 be waived?

Hon. Senators: Agreed.

[Translation]

Pursuant to Order of the Senate, Ms. Jennifer Stoddart and Mr. Robert Marleau were escorted to seats in the Senate chamber.

The Chairman: I would like to welcome our witnesses and I call on Ms. Stoddart to take the floor.

Ms. Jennifer Stoddart, Chair, Commission de l'accès à l'information, Québec: I am pleased to appear before you today and I am very happy that you appointed me to this position, which involves great responsibilities and is very important to Canadians.

[English]

As you know, the Privacy Commissioner has important responsibilities, first, under the Privacy Act and, second, under the recently passed Personal Information Protection and Electronic Documents Act, to which I will return shortly.

As honourable senators know from their previous debates and experience, privacy issues are sensitive and important issues in Canada today. We are trying to reconcile our privacy with ongoing social and national needs. I will give a few examples. There are the issues of health care; matters of accessibility to information that government has on its citizens in a way that respects our own privacy; questions of access of information held on us by the government; and the growing question of how the private sector uses information that we may give out in the context of commercial transactions.

All this is taking place today in a highly charged context in Canada and in the international community. International security has been heightened in the last few years. Across the world, we see issues of border controls emerging because of the transnational and international migration of peoples, heightened again by security issues that are intermingled with this flow of peoples.

• (1410)

We are concerned also, as Canadians, about rising health costs. Therefore, to the extent that the cost of information transmission can speed and lower our health costs, we want to look at it in a way that is not intrusive to our privacy. Electronic commerce is imposing itself as the way to do business, and this brings us new privacy concerns.

Finally, all kinds of technological innovations pose new facets of issues of privacy, such as the legal access proposals of the government that were brought forward as a result of the Canadian government signing the International Convention on Cyber-Crime. This allows us, because we have the technological capacity, to go back and look at people's e-mails for the last six months. When we could not do it, these issues were not there. Now that we can do it technologically, we must determine the costs of doing it in terms of privacy and the benefits.

I believe you have received information on my candidacy, my previous training and my career. I have been a civil servant for 20 years, always in a management position. I am trained in law and the social sciences. I am a member of the Quebec bar and, until now, my career has been focused on human rights in one facet or another.

[Translation]

In closing, my first priority, should the Senate see fit to confirm my appointment, would be to restore the Senate's confidence in the Office of the Privacy Commissioner and its operation, by

following the Marleau plan. Mr. Marleau has set out a comprehensive plan for restoring the smooth operation of the office, and I would follow it. In cooperation with the Auditor General and the public service, I would inaugurate appropriate standards for the administration of personnel and public funds. In this, I would have the assistance of the two deputy commissioners who have been appointed.

The second priority, which must go hand in hand with the first, is to ensure the coming into force of the e-commerce legislation, to work in conjunction with the provinces on putting it into effect, and ensuring that Canadians have enough information to encourage voluntary compliance.

My final priority will be to continue to monitor government action in connection with privacy issues. As we know, government action tends, by its very nature, to pose a challenge for the protection of privacy, in such areas as the multitude of data banks, the emergence of government on line to provide better service to Canadians, the question of identity cards that is out there at present, and being discussed by Minister Coderre, the matter of video surveillance. These are all privacy-related matters that are being raised in government. I hope, honourable senators, that these few comments have been informative. I will be pleased to respond to questions.

The Chairman: Mr. Marleau, do you have any comments or statements?

Mr. Robert Marleau, Acting Privacy Commissioner: Honourable senators, if the Senate so desires, I could make a few remarks on the selection process.

At the end of August, I met the Honourable the Speaker Hays and the Honourable Speaker Milliken in order to inform them, so as to dispel any doubt, that I did not intend to seek a permanent mandate with the Privacy Commission and had the firm intention of leaving on or before December 31, 2003.

[English]

In September, I appeared before the Operations and Estimates Committee in the House of Commons and made that position public. I then urged the government house leader in the House of Commons, who was the lead minister on the file, to begin a selection process.

It became known that I would not pursue a permanent mandate. As a consequence, many Canadians made their interest known, at the office of the Leader of the Government in the House of Commons, to myself in my office, to the Prime Minister's office and to the Privy Council Office.

All candidates that submitted their interests were reviewed by a pre-selection committee composed of the Leader of the Government in the House of Commons, the PMO and myself, against a set of criteria. I believe honourable senators have received a copy of the selection criteria.

[Translation]

I will not list them all for you. The documents are there for you to read.

[English]

Interviews were then held on October 10, and on October 10, from a short list of five candidates, one withdrew during the process. On October 17, the interview process was closed. A selection panel was composed of the Honourable Don Boudria, the Leader of the Government in the House of Commons; Nicole MacDonald, Director of Appointments in the Prime Minister's Office; Wayne McCutcheon, the Director General, Senior Personnel in the Privy Council Office; and myself, as the Interim Privacy Commissioner.

The interviews were conducted, on a series of those criteria that you have before you, with wide-ranging questions testing experience, knowledge and management skills, leadership being at the top of the list. Subsequently, reference checks were conducted by the Privy Council Office on the lead candidate, which was Ms. Stoddart, and all those references were laudatory and supportive.

Finally, there was the usual three-way security verification; that is, one with the CCRA, one with CSIS and one with the local police forces. All those confirmed Ms. Stoddart as a qualified and desirable candidate.

[Translation]

That is in essence what I wanted to say at this stage, and I will be happy to answer questions from the honourable senators.

[English]

Senator Kinsella: I wish to begin my questioning with Mr. Marleau. By way of preambular comment, let me extend, on behalf of my colleagues, our deep appreciation for the work you did and the leadership that you provided under very difficult circumstances. Congratulations. We were very appreciative and very reassured, knowing that a very distinguished former officer of Parliament would fill the gap that was created.

In that period of time as the Privacy Commissioner, what were some of the administrative issues that really stood out for you in relationship to what the act provides and the particular machinery that had been put together to meet the objectives of Parliament when we passed the act and created the office?

Mr. Marleau: Thank you for your kind comments, Senator Kinsella, about my coming forward on this interesting file.

In response to your questions, there are two issues that I would draw to your attention and to the attention of the entire Senate body.

[Mr. Marleau]

There are two statutes for which the Privacy Commissioner is responsible for: the Privacy Act and, now, the PIPEDA Act, passed in 2001 as the Personal Information Protection and Electronic Documents Act. It became apparent to me, say, six weeks into the mandate, that the office needed to be restructured around these two statutes. It was no long an issue of just privacy in the public sector and privacy under the new statute. The management structure had to be reshaped in order to support both those statutes.

PIPEDA is important because it will roll out to the entire private sector on January 1, 2004, in those provinces where a similar statute has not been adopted.

• (1420)

I felt we had to restructure our office around those two pieces of legislation. We now have an assistant commissioner responsible for the Privacy Act and an assistant commissioner responsible for PIPEDA.

Senator Kinsella: Mr. Marleau, in your experience over the past few months as a privacy commissioner, have you come across cases, identified either by citizens or by whomever, that raised for you questions as to certain government institutions under federal jurisdiction that were not effectively covered by the statutes that you were administering?

Mr. Marleau: This was also raised in other place when I appeared before them on the annual report of the office. There is the issue of Crown corporations and there is the issue of third party organizations and NGOs, who may be subsidized or funded through government funding, and those are the kinds of peripheral, if you like, federally engaged institutions that are not covered by the statute.

Senator Kinsella: Madam Chair, I would suspect it is to the report of the Privacy Commissioner where we really need to look.

I am tempted both not to ask and to ask a question as to your opinion with regard to whether or not Parliament should exert some influence in support of our officer, our Privacy Commissioner, such that some of these creatures of Parliament, indeed, are brought under the purview of the Privacy Commissioner.

Mr. Marleau: I have no hesitation in answering that question directly. It seems somewhat incongruous that PIPEDA will now apply to a series of private sector businesses, such as mom-and-pop video shops, and that the Privacy Act does not apply to many of the Crown corporations. I would invite the Senate to look at that closely.

Senator Kinsella: Honourable senators will recall how we did very consciously begin a process of letting the privacy commissioner know that the privacy commissioner could come to the Senate. We have had privacy commissioners before us in Committee of the Whole to learn from them of some of the difficulties that the office was having, such that we might use the influence of this house in the interests of the public. This brings me to the nominee.

In your experience with the National Assembly in Quebec, did you have a regular relationship with a committee? Did you go to Committee of the Whole at the National Assembly to bring forward problems that you were having or issues that you felt ought to be brought to it directly, and have conversations or dialogue in this kind of open forum with the National Assembly?

Ms. Stoddart: Honourable senators, no, the relationship of the Quebec commission d'accès à l'information is slightly different. I believe it is different in law. The Quebec commission is part of the portfolio of the ministry. However, the commission, in its latest five-year report — and the National Assembly just finished sitting in public hearings on that report — has made the formal recommendation that the Quebec commission depend directly on the Speaker of the National Assembly. Therefore, the Quebec organization is looking for that kind of direct change.

Up until now, it has not gone to the National Assembly sitting as a Committee of the Whole. It goes very often before different committees. The first year I was named, I was in the National Assembly committee seven or eight times in the context of various pieces of legislation that were going forward. They would ask for our opinion and our testimony.

It has always been a relationship through a committee. There is a special committee called the "Commission of Culture," which is specially charged with reviewing the five-year report that the minister lays before the National Assembly every five years. There is a regular review process of that office.

Senator Kinsella: Could you share your view with honourable senators on this question: Do you believe that privacy is a human right?

Ms. Stoddart: Certainly, I believe privacy is a human right. Its exact legal status is another question, but I believe privacy is a human right.

Senator Kinsella: For the legal positivists in the room, what do you mean when you say that its legal status is in question?

Ms. Stoddart: I am sorry, I did not hear you.

Senator Kinsella: On the assumption that rights only are real rights if they are based on real law, do you question that the right of privacy is not a legal right?

Ms. Stoddart: Do I question that it is not a legal right?

Senator Kinsella: Is privacy a legal right?

Ms. Stoddart: I believe privacy is a legal right, but the type of legal right that it is, of course, depends on the particular law that you are dealing within our Canadian context.

The Chairman: Senator Kinsella, your time is up.

Senator Kinsella: Thank you, Madam Chair.

[Translation]

Senator Beaudoin: I have a question concerning privacy. It is also found in the Canadian Charter of Rights and Freedoms. I am referring to the Charter in the sense that it is case law, because it makes no mention of privacy as such.

Ms. Stoddart: No.

Senator Beaudoin: It is set out in sections 7, 8 and 9, and other legislation. You pursued graduate studies in France and at McGill. How do you view privacy? How do you define this concept? The right to privacy is fundamental.

Ms. Stoddart: This right has, at the same time, always existed and has been somewhat implicit with regard to certain practices and all kinds of legislation, which differ from one society to the next and from one era to the next. We have always had a right to privacy without it being labelled as such. Privacy is inherent to the customs and traditions of each society.

With the emergence of British case law, the legal concept of privacy — which had remained uncontested in civil society — was established, perhaps for the first time, by criminal law. All the concepts underpinning our criminal law refer to privacy. This now serves as one of the bases for our definition of privacy. In criminal law, privacy is extremely important, as is evidenced by the restrictions on illegal searches and seizures.

• (1430)

Senator Beaudoin: The reason I am asking you this question is that we are senators and we have public lives and private lives.

Precedent, on sections 7, 8 and 9 of the charter and on many other statutes, is fundamental. There is a right; whether it is established by precedent or by the Constitution, it exists. Mr. Nadeau, a jurist, has written a thesis on privacy. I had the pleasure of directing his thesis. He made the meaning of this constitutional and legal concept quite clear.

The meaning of the word "privacy" is very important. Do you consider it a fundamental right?

Ms. Stoddart: Yes, it is a fundamental right in our legal culture. I have spoken with Mr. Nadeau. It can be acknowledged that it is not written explicitly into legislation, not even in the Charter of Rights and Freedoms. But it is an implicit right.

Senator Beaudoin: Have you had an opportunity to work with the Quebec jurisconsult, Justice Albert Mayrand?

Ms. Stoddart: No, I have not had the honour.

Senator Beaudoin: You will in the future, I am sure. With respect to statutes, what value do you assign to the statutes, some federal and some provincial, that deal directly or indirectly with privacy rights? Are these quasi-constitutional or just ordinary laws?

Ms. Stoddart: If you look at the Charter of Rights and Freedoms or the Privacy Act, expressly set out in section 5, for Quebec laws, it has constitutional value. It has often been said, and I believe jurists are still debating the point, that the Quebec public sector access legislation also has a certain constitutional value because it is an act which takes precedence over others and which protects not only the right to access, of course, but also the right to protection of personal information. In case of interpretation, the primacy of this act is to be recognized.

Senator Beaudoin: There are quasi-constitutional laws. Do you believe that?

Ms. Stoddart: Honourable senators, it is a great debate. I would say that the Quebec Charter is a yardstick, first, and has a constitutional value for anything that concerns Quebec's legislation. In the body of Quebec's legislation, a law that has priority over others — the access legislation for example, has a status that is quite unique along with the Charter of Rights and Freedoms — certainly has a type of constitutional value.

[English]

Senator Milne: Ms. Stoddart, I have a particular interest in the historic census results, so I want to know what your attitude toward access to historical census results is. I will give you a little bit of background, so I do not blindside you.

An Hon. Senator: You only have 15 minutes.

Senator Milne: It has taken six years; forget 15 minutes.

All census results in Canada up to — and including now — the 1906 census have generally been released after 92 years. This has been the law of the land up until recently. Bill S-13, a government bill introduced in the Senate, was designed to allow controlled access to census results after 1906 — that is 1911 on — after 92 years.

Bill S-13 has stalled over in the House of Commons and is, I suspect, fairly unlikely to proceed on the Order Paper over there until — well, who knows when? There will undoubtedly be a prorogation and an election before it actually gets going again.

Some Hon. Senators: Oh, oh!

Senator Milne: It was refused movement to committee over there by — I would not say who did it, but you can check Hansard. If this bill dies, as I suspect it will, on the Order Paper, what will be your attitude toward future bills along the same line, allowing access to historic census records?

I should tell you that when Bruce Phillips started his tenure as Privacy Commissioner, he was strongly against it. He believed in trashing and burning old census records. He gradually evolved over the years — year by year, we could see the difference in his answers here — until he finally agreed to a controlled access to them.

The last Privacy Commissioner, who has now left us, had an agreement with Mr. Phillips that he would stick to that line. Over the years that he was there, there was no continual change whatsoever in the attitude toward access to these historic records. I would like to know your attitude toward it.

Ms. Stoddart: Thank you, honourable senator. This is a question that does interest me, as you may have read. I have a past as a historian, and I have read the equivalent of many census records, both in New France and pre-Confederation census records.

I am generally aware of the position taken by the Privacy Commissioner. That seems to me, I guess, a position that I would be comfortable with. I would, however, like to add the personal note — and this is a spontaneous answer — that 92 years seems a short time to me.

We, as Canadians, are living longer. I forget the average age now, but it is around 80. That means many of us will live well over 80. If I look back into my own family life at something that was happening in the census of 1906 and 1911, my grandparents were alive. I remember my grandparents very well. I am not sure if the time is yet ripe to have people with whom you have a living link expose their lives completely to public gaze.

It depends then, of course, who the public is — and who would have access. I think professional historians are very conscious of the question of protecting privacy now. However, you have to remember that Canadians confide in the census because we believe in the confidentiality of that.

It seems to me that 92 years is quite short. Spontaneously, it would seem to me that a bit longer time span would protect the sense of intimacy that is in families when generations now last longer and when 92 years is, in fact, a very short time. We are talking about personal information. This is not aggregate information; this is information that can be linked to a single person living at a residence and so on. By going through the census records, you might discover things about your family that were the opposite of what you thought.

My spontaneous reaction is, should we not look for a slightly longer period?

[Translation]

Senator Lynch-Staunton: Before I address you, Ms. Stoddart, I would like to repeat to Mr. Marleau what Senator Kinsella said.

• (1440)

[English]

Mr. Marleau, thank you for assuming such a responsibility under tremendous handicaps. I understand that you have been able to leave to Ms. Stoddart a reasonably well-functioning organization that she could improve to return the office to its expected status.

[Translation]

Ms. Stoddart, I mostly want to ask you what the major differences are between the law, which governs the commissioner — I do not know the exact title of your counterpart in Quebec — and the law that will now govern you? Is there something in Quebec's legislation that should be included in the federal legislation, or vice versa?

[English]

Have you found any flaws in the Privacy Act that you would like to see improved? Are there any improvements that could flow from the Quebec law? What are the major differences in the authority given to you respecting the areas of your authority? To which departments do you have access? Will that apply in Quebec? Will you be able to transfer jurisdictions without being forced to re-adapt to the rules and regulations that will govern you?

Ms. Stoddart: Thank you, honourable senator. No, I will have to re-adapt because the laws of Canada are slightly different in respect of privacy — the practice and the customs. The previous interpretations are particular to the federal Privacy Act. The same general principles are respected in both legislations. However, the Quebec Privacy and Access Commission is an administrative tribunal that sits to hear cases of access, for the most part, and to investigate privacy cases. It turns out about 400 decisions per year. A large part of the work of the commission, about 50 per cent, involves hearing these cases. It also supervises the administration of law and gives advice to the government. Perhaps those parts are similar in the two commissions.

In Quebec, as in many other provinces, such as Ontario, Alberta and British Columbia, access to information and privacy are in one statute and the same body has authority over both. This system has been in place in Quebec for 20 years. The system also applies to Quebec's private sector legislation. As you know, Quebec is the only province to date to adopt private sector legislation, which was estimated by former Commissioner Radwanski to be substantially similar to the Privacy Act.

The commission plays the same role in the enforcement of the private sector legislation. The Privacy Act sets up a separate privacy commission, which has also existed for about 20 years. It

has adopted an ombudsman-type model, whereby the commissioner may investigate and make findings but has no order-making power.

That would be the major difference. The Privacy Commissioner, however, has the power to take a case before the federal court, but this happens infrequently, I understand. A complainant may also go before the federal court if he or she is not happy with the commissioner's findings. One is more a model of persuasion and the other is an executory model.

Senator Lynch-Staunton: You said that the Quebec Privacy Commission comes under the authority of one minister and that it was hoped the authority would be transferred to the Speaker of the National Assembly. Is that correct?

Ms. Stoddart: If I could correct you, honourable senator, it is not really under the authority of the minister. There is a carve-out in the Quebec Financial Administration Act and the Quebec Access to Information Commission, such that there are five commissioners and I am the president. There are four other commissioners. We adopt our own yearly objectives and action plan, which do not have to be approved by the minister. We have an arm's-length relationship with the government. Senator, you understood correctly that we have suggested that it would be better if the commission were attached to the Quebec National Assembly.

Senator Lynch-Staunton: Would you not prefer the stand-alone commission with more independent authority such that only Parliament can take it away?

Ms. Stoddart: That is what we have suggested. It would be equivalent to an Officer of Parliament. We would then be an agency of the Quebec National Assembly, as is the Office of the Auditor General of Quebec. We have suggested that as the ideal situation.

Senator Lynch-Staunton: As a final question on this round, is there close cooperation between provincial privacy commissioners and the federal privacy commissioner? That would not include information, obviously, but is there cooperation in respect of shared experiences, efforts to make the systems as uniform and seamless as possible, and the confirmation of privacy rights — provincial and federal — of all citizens? Is it a case of each commission working in its own bailiwick?

Ms. Stoddart: No, in my experience there is very close cooperation. The group of privacy commissioners across Canada tend to be dedicated individuals, sincerely interested in the issues of privacy. The commissioners meet as frequently as possible, given their budgets. There is an annual, informal meeting, frequent telephone meetings and individual conferences or conversations on issues of common concern. Basically, across democracies, the issues of privacy are highly similar. There is a highly networked privacy community that is congenial and helpful.

Senator Lynch-Staunton: Not to be provocative but if I were to suggest that privacy is more the hope than the reality, for obvious reasons, how would you respond?

Ms. Stoddart: Privacy is a reality in many circumstances. I think privacy exists and will continue to exist. It must exist. However, it does not exist in the form of hope only. Privacy is seriously challenged and will continue to be seriously challenged by technology and by the international situation in a changing world order. Yes, it continues to be a hope, but it is also a reality.

Senator Lynch-Staunton: I think that your predecessor accomplished his work extremely well and engaged himself actively in many areas, including challenging the government on what he felt was an intrusion of privacy in certain legislation. Bill C-17, which is currently before the Senate, is the second part of the government's anti-terrorism legislation in which there are threats to privacy. When Bill C-36 was first introduced, the former Privacy Commissioner did not hesitate to make his views known. Whether or not one shared his views, it was refreshing to have them brought to Parliament. Those views had an effect on the final bill. Do you see yourself able to point out to government, without hesitation, any threats to privacy rights that may occur in proposed legislation coming before Parliament? Would you alert us to them?

• (1450)

Ms. Stoddart: Absolutely. This is one of the key functions of the Privacy Commissioner. If he or she does not talk to Canadians, to the Senate and to the House of Commons about privacy threats, this whole aspect may go unnoticed. It is very important. We have seen, in the last three years, extremely new, unprecedented pieces of legislation, and I would continue to play an activist role because they are important. We are making milestone decisions with this legislation, and you have to hear all the aspects and ramifications before making your final decision.

[Translation]

Senator Lynch-Staunton: Your predecessor did excellent work and I encourage you to take the same path. Good luck in your new position.

Senator Gauthier: There is a different procedure for each of the five officers of Parliament. In the event that you are confirmed to this position, you will become part of this group.

Mr. Marleau was a Clerk of the House of Commons. He had our trust and swore an oath of allegiance as an officer of the House of Commons. Officers of Parliament are not obliged to swear allegiance, except for the Clerks of the House of Commons and the Senate. Mr. Marleau said so himself in a book he wrote. What do you think?

Ms. Stoddart: This is the first I have heard of this. I am surprised. I was sworn in by the Speaker of the Quebec National Assembly as the Chair of the Commission d'accès and I am still

bound by that oath. The Speaker of the Quebec National Assembly also swore me in when I was the Deputy Chair of the Human Rights Commission.

Senator Gauthier: This is a little known fact. The reality is that there is no specific oath prescribed for swearing in officers of Parliament. Should I take it for granted that you are in favour of the Privacy Commissioner's taking an oath?

Ms. Stoddart: Yes, absolutely.

Senator Gauthier: There is no common oath. Each officer takes a different one, and there was some negligence on our part. The Privacy Commissioner is appointed with the consent of the House of Commons and the Senate, on the recommendation of the Prime Minister or the Privy Council. The Auditor General and the Chief Electoral Officer are appointed on the recommendation of the Prime Minister and of the House of Commons, but not of the Senate. The other three officers have to undergo the scrutiny of both houses of Parliament. I will try to convince my colleagues to standardize all that. There are members of the other place who are in favour of standardizing all procedures for appointing officers.

If we demanded that you take an oath of allegiance, would you?

Ms. Stoddart: Yes.

Senator Gauthier: Your office is not subject to the Access to Information Act. Am I right?

Ms. Stoddart: That changed recently. Interim Commissioner Robert Marleau has already gone on the record on that.

Mr. Marleau: You are absolutely right. The Access to Information Act does not apply to the Office of the Privacy Commissioner, but I have made public statements, saying that I had no hesitation in asking that this legislation be amended to make our office more transparent, in view of the need to protect certain files.

[English]

Senator Pearson: I would like to welcome Ms. Stoddart to the Senate. We have met in other circumstances. It will not surprise Ms. Stoddart that my question is about young people.

Specifically, my question touches on the issue of a child's right to privacy, and the Convention on the Rights of the Child, which was partly touched upon by Senator Kinsella as it relates to human rights and legal rights. An example of my concern relates to the new Youth Criminal Justice Act, and the degree to which the records of young people can be shared with school authorities and so on.

Without going into detail, my question is about the degree to which you feel your responsibility will be to look at all proposed legislation that to determine the implications for privacy, and how will they respond to the obligations we have undertaken with respect to certain conventions and so on.

Ms. Stoddart: Thank you, Senator Pearson, for your question. It is a standard and ongoing responsibility of the privacy commissioner to look at oncoming legislation in order to evaluate its impact on privacy, and to give advice and make representations on them if necessary.

As you say, we both share an interest in issues relating to youth, myself from the time I spent at the human rights and youth rights commissions. This carried over to my most recent responsibilities in access to information privacy. I found that all the commissioners at the present Quebec access to information commission shared my concern, when I started to work within that system, of the number of files of young people for which access was being sought — access being sought not by the young people themselves but usually by a parent, who was involved in some other dispute or had another issue ongoing.

We recommended to the Quebec National Assembly that, in access to information and privacy issues going forth under that provincial legislation, the child be represented, in the light of Canada's, and therefore Quebec's, obligations under the international Convention on the Rights of the Child.

The fighting that goes on over who gets access to the school records, who gets access to other records, to police records, is a matter of very serious concern to us, and the desire of a parent to know what their child said, and so on and so on. It is clear to us that it is the interest of someone else that is foremost. Therefore we think this would be an important amendment.

I give this example to show my own personal concern with the issue of the rights of children.

Senator Comeau: Mr. Marleau and Ms. Stoddart, it good to have you in the Senate. Welcome. I would like to get back to the question raised by Senator Milne regarding the promise of confidentiality in the census bill. The premise of the bill, as proposed at that time, was that the promise of confidentiality to the individual, the census respondent, would die after 92 years. The promise dies with the respondent.

• (1500)

I think that even the most ardent of supporters of the bill believe that that promise was made and that there is a "best before" date. After 92 years, the "best before" is gone. The problem is that when the promise was made, there was no expiry date on it.

You said that 92 years may not be long enough. In fact, if the promise was made without an expiry date, does even more than 92 years reduce the value of the promise?

Ms. Stoddart: Honourable senator, it would be difficult for me to give you a precise answer. I would have to look at exactly what

was said to Canadians 92 years ago. I have not looked at this issue recently and I do not know what was said to them.

Senator Comeau: If you would.

Ms. Stoddart: I will.

Senator Comeau: My concern about the bill was that there was a promise made. If we wish to bring in a bill that says that henceforth there shall be no promises of confidentiality, or that promises of confidentiality extend for only 92 years, we may do that. However, it is our duty to keep the promises of our predecessors. If we start saying that when our predecessors are gone their promises go with them, soon Canadians will say that the promises that politicians make in writing are not worth the paper they are written. That is something you might want to look into.

I already advise constituents who ask me questions regarding the census to be very cautious, because two federal ministers, Sheila Copps and Allan Rock, said that it was perfectly correct to do this.

My second question is with regard to a bill we passed a few years ago on long gun registration. Without going into the merits of the bill, there were provisions in it to seek information from Canadians who wished to get a licence to own these firearms. The questions included the following: Have you had a recent mental breakdown? Have you just ended a relationship with someone? Have you recently failed a test? Have you been fired from a job? These are very loaded questions about private matters, and they required a "yes" or "no" answer, which answers go on to government files.

Should Canadians be asked such questions requiring "yes" and "no" answers? If one has had a mental breakdown, that information should probably be kept between a doctor and a patient, but now the government is saying that if people want a gun licence, we need to know this information.

What are your thoughts on that?

Ms. Stoddart: Honourable senator, it is hard for me to answer you in any great detail because I have not looked into that legislation myself. However, I know that the office of the Privacy Commissioner had serious concerns over several years about this, and I have heard the concern expressed publicly that these are extremely intrusive questions.

My understanding is that the investigation is ongoing in the Privacy Commissioner's office. Without judging that legislation right now, I would say that those kinds of questions are, as you say, usually questions reserved for a doctor-patient relationship.

Senator Comeau: There is still a stigma attached to mental illness, and it sometimes results in a certain kind of unwanted attention in the community, therefore people have a tendency to avoid making it public. My concern is that if the government asks those types of questions, people will not seek the medical help they need in order that they can keep their rifles. The very people who need help will not seek it because they do not want that information on record.

I would expect a commissioner of privacy to understand that those types of questions will cause more problems in society because of their intrusiveness, because people will not seek the help they need. I would hope that the privacy commissioner would champion the cause of stopping the government from asking such intrusive questions, because I do not think this is the kind of society we want.

Ms. Stoddart: We agree totally on the principles involved. First, it seems to me that these kinds of intrusive questions are not in the right place.

Second, there is a question with regard to how accurate the responses are when asked in a non-medical context or how helpful they are with regard to preventive measures for people who may have problems.

Senator Comeau: When I asked officials about this, they said that when investigators go into the community to follow up on these questions, they will not advise the person's neighbours why they are asking questions on the subject.

How can one go into a small rural community, where there are sometimes a lot of rifles, and ask questions about someone's mental state or whether one has recently left a relationship? I am not sure whether one would want to put it in writing if they have left a relationship. One's spouse might not be happy to hear that you have recently left a relationship when they find out after being asked questions on these documents.

These are not the kinds of things that should be happening in our society, and I would be looking for a champion of that opinion.

[Translation]

Senator De Bané: Mr. Marleau and I arrived in Parliament at around the same time. He quickly earned everyone's trust with his efficient work and gained the trust of people in all of Parliament. I wish to express my friendship and esteem for you, Mr. Marleau.

I would like you to know, Ms. Stoddart, how favourably impressed I was with the quality of your exchanges with my colleagues. Your analytical abilities are extraordinary. I was greatly impressed. I can readily understand why the selection panel decided on you after interviewing a number of candidates.

The matter of privacy, what a U.S. Supreme Court judge called "the right to be left alone," is a fundamental right, in my opinion, as is the right to express oneself and make one's convictions known.

[English]

The right to be left alone is a fundamental right, and to me a fundamental right means a right that cannot be dissociated from human dignity. To undress a person or to divulge his secrets is exactly the same humiliating thing.

I would be very interested to hear, in a few words, your convictions about the right of privacy.

• (1510)

Let us put aside the legislation as it stands in our country or any other. Philosophically, where do you stand on the issue of the right of a person to be left alone?

When I tell you that, I am thinking about the Web site <http://www.411.ca>. I go there, I enter your phone number, I am given your name and your address. Then they ask if I am a classmate of so and so? Do you want to send him flowers? Do you want to know his criminal record? Do you want to know his credit rating? They have everything there. For each question you must pay so much with your Visa credit card. There is no more the right to be left alone. You can "Google" everyone in this room and find out references and what is said about that person.

That right is the other side of the coin for me of the right to shout my convictions. When I want to be left alone today, I have that less and less. I would love to hear your convictions, your philosophy and forget about the legislation in Canada or other countries. Where do you stand on that issue of the right to be left alone?

[Translation]

Ms. Stoddart: That is a right and a value on which I have placed great importance in my private life. I am a rather private person and keep my private life to myself. You want to hear about values, rather than legislation.

The definition of privacy you cited is, I believe, from Oliver Wendell-Holmes.

There are many others I cannot quote by heart. One important point when we discuss the philosophy of privacy is that this is a value that evolves over time, shaped by our life experiences, our position in society, our present and past perspective, and so on.

There are not, I would think, any definitions of privacy rights that are not malleable.

Senator De Bané: Do I have the right to know everything about you? I think not.

Ms. Stoddart: No, but in certain circumstances, in keeping with the malleability of the concept I have referred to, you may have the right to know certain things. That is where our role lies. Any privacy commissioner's role is to advise you, and your role as law makers is to say: "Under what exceptional circumstances would I allow certain information about someone to be made known, in connection with matters of public order, in connection with vulnerable individuals such as children, and so on?" There are exceptions.

Currently, privacy is rooted in the evolution of this right with respect to other aspects of the way we live in society, which, for lawyers, is governed by laws. You mentioned people doing searches on others on the Internet. It is interesting, since the Internet has been around for barely ten years. Initially, people thought the Internet was amazing and a sign of total freedom. Everyone surfs the Internet; it exists on a separate plane, outside governments. There is a growing need to regulate the Internet, in order to avoid the worst excesses in terms of infringement on privacy.

An international organization is considering this, and UNESCO and the United Nations will soon examine this issue. The adverse effects are no longer within our control, with what you said.

The Chairman: I simply want to remind you that there are ten senators who wish to ask questions and there are only 45 minutes remaining.

[English]

Senator Andreychuk: I wish to echo all of the well-deserved praise that Mr. Marleau is receiving and ask him a question before I go to Ms. Stoddart.

The first Privacy Commissioner, Mr. Phillips, was before my time, but he was proposed and politicized in the process of the election — and unjustifiably so, since he held the office commendably. The second Privacy Commissioner was also politicized, and those who pointed out difficulties have now been vindicated while the rest of us who voted for him have had to reflect on whether or not we did our jobs properly.

We are now at the third process. With your experience, I am not sure whether you had knowledge of how the first two Privacy Commissioners were appointed through the process of Parliament, and how this process is different and, we hope, better. Could you comment? Do you think it is a stronger process in regard to the selection committee and what the House has done and what we are doing? Would you care to comment in a general way from the safe distance that you have from the House?

Mr. Marleau: Thank you, senator, I feel free to comment.

I am not aware in detail of the processes within the Privy Council Office or the Prime Minister's Office of the appointments of either Mr. Phillips or Mr. Radwanski. I am aware of the

parliamentary process, which was more open and transparent. As a matter of interest, I read some of the transcripts over the summer.

What was different this time is that I took the initiative to convince the Government House Leader that there was an urgency to proceed with an appointment, given the fact that I was intending to leave in December and felt deeply that the office could not deal with another interim commissioner, and that the best candidate, given the time and the means, should be recruited.

What was different this time is that I participated in the drafting of the selection criteria. I also participated in the drafting of the questions. I also participated in the interview process. I also added the name of three provincial commissioners to the list, not as my preferred candidates but because I felt that there was a community, professional practitioners there who ought to be considered; two were considered, one withdrew.

What was different, this time, if I can say this as your officer — although I was not confirmed by the Senate — but as a parliamentary officer, I participated in the selection process. It is unusual for the outgoing commissioner to participate in the selection of the incoming commissioner. I would not recommend that as being the magic formula. However, the Senate and the House of Commons may want to consider their input on confirming the selection criteria, if not participation on the selection panel, certainly confirming its profile or composition. It may not necessarily be someone from Parliament, but perhaps someone Parliament might designate to participate. By the time you get to this stage, you have a reasonable assurance that some of those more bureaucratic — if I may put it that way — process issues have been addressed with your interests in mind.

Senator Andreychuk: The overwhelming preoccupation has been to ensure that we are doing our job, ultimately. This appointment has come too quickly, but I think, in an effort to give the kind of support and transparency to the professionalism of the job, we require more guidelines and a process that assures us that we have done our homework. I thank you for pointing us in the right direction.

Ms. Stoddart: you do come with a professional history and credibility for this office. No doubt, as with Mr. Marleau, the instant he took the position he gave back credibility, and I hope that that will continue. Your record certainly speaks to the fact that we should have every confidence in you to do that.

In observing the Privacy Commissioner throughout the entire anti-terrorism time, I came to the conclusion that we are entering different times. We heard comments of a generic nature from the Privacy Commissioner, speaking to Parliament or to the people of Canada, indicating privacy concerns and being quickly translated into either a defence by the political system or an opposition by the political system to particular sections in legislation.

• (1520)

I thought, perhaps, it was just a one-off. However, it would appear to me that the trap that the next Privacy Commissioner might find herself in is in the fact that she will be called upon to either defend government legislation in the making or to oppose it. That gives me some concern because it will involve stepping beyond the generic into the specific, which would compromise the commissioner's duty to all citizens, if I may use that phrase. I say that because the commissioner would be taking one side or the other at a crucial time when, in essence, it is often a political debate and not a legal one.

If you have reflected on that, how would you propose to deal with it?

Ms. Stoddart: Honourable senators, I have not reflected on those details in the context of the present position. However, this is something that I do in the position I now hold in Quebec. When the National Assembly is sitting, it is something I do almost every week or two, certainly every month, when we have commission meetings. I am very used to that position. I think you said it went against the public good, senator.

Senator Andreychuk: I did not mean it was the public good. The point is that when you get to a point of debate in the House of Commons or the Senate and you are called as a witness, you can appreciate there is a defence of legislation and there is a critique of it. Once you give your advice, you seem to have tipped your influence to one side or the other.

Given the fact that you are serving all Canadians, that can sometimes be misinterpreted and, in fact, it can politicize you. I am concerned about that more and more on these pieces of legislation, and I think we will see more of them because of, as you said, the world in which we are now living.

Ms. Stoddart: One expects from a Privacy Commissioner that you take your position irrespective of the political gains, losses or consequences. Your role is to advise Parliament on the privacy implications of a piece of legislation. What people do with this and how they use it is something over which you have no control.

It should not at all change or shape your judgment. You have to give the best opinion that you have, given the context of the legislation and the way it would be applied.

As I have said, this is something that I have some experience in doing. It does not necessarily win one stars. It is often difficult for the public to understand the position.

For example, in Quebec, we took a position against a plan to change the health card system to a smart card system. We are for smart cards, but we were against the fact that the smart card would have been linked with new centralized databases on people's personal health information. We said the project was not

ready to go forward. There was a lot of criticism about our position because it seemed to be good for the health of Quebecers, et cetera.

In the end, we were not alone and the project was withdrawn to be considered more carefully.

Personally, I have been in the position where I have had to take an unpopular position. Some editorialists criticized us strongly, saying that we would never have a modern health system if we take these kinds of position. We said, "No, you are going too fast. You have to think about how you protect privacy when you are redoing the design of health information."

Senator Andreychuk: In light of the time, I wish to raise other issues to which I do not expect answers.

I refer to our duties involving international conventions and treaties that have privacy terms and conditions in them and how they weigh on today's situation in Canada and the proportionality to the right to privacy and freedoms versus the right to security. I believe that proportionality is important.

With that, I trust the dialogue on fundamentals will continue, including the one raised by Senator De Bané where privacy is very much a cultural issue. As a historian, that may be an interesting perspective to pursue later.

Senator Moore: I have one question for you, Ms. Stoddart. Is there anything in your personal history, financial or otherwise, or do you anticipate anything that would bring negative reflection upon the office that you seek and the people that you would serve or that would inhibit you or detract from your diligent performance of your duties?

Ms. Stoddart: No, honourable senators, I do not think there is.

[Translation]

Senator Prud'homme: I want to wish you a warm welcome. I also want to be quite merciless in thanking Mr. Marleau, whom I know well, for having cleaned the Augean stables and have assured the entire staff, to whom I am quite attached, that, finally, they will be able to speak freely, to the best of their abilities.

I have always supported Mr. Philips; I was a Liberal, I defended him and I voted for him. I will not apologize for saying that I vehemently defended my position here by opposing Mr. Radwanski's appointment and, contrary to the custom of being nice and agreeing to the motion on division, I forced a vote under the *Rules of the Senate*. I had my reasons. I will not list these reasons to you, but I will give you the record of his appearance before the Senate. This will assist you, I hope, in your work.

I am sure that Senators Kinsella, Lynch-Staunton and others regret the haste with which we have received you today. I am rather sorry, too, because when the previous commissioner came here during consideration in Committee of the Whole, there was a raised seat, and the television crews were here. You know, Madame, that the Senate is often criticized, but more than half the senators, with only an hour's notice, have come here on a Friday afternoon, to show their interest. I am sorry that it has all happened so quickly; we could have had television — although on the previous occasion, some of you will remember, they ran out of video tape just as I was talking. Imagine that!

[English]

Do honourable senators remember that the cameramen ran out of film just as I was about to get back to Mr. Radwanski? It was a strange coincidence. At any rate, I survived.

[Translation]

Mr. Marleau, I have had great confidence in you for thirty years as a member of Parliament. We are in the midst of drafting an ethics code for the Senate. Take a well-deserved rest, and we will probably be able to call you back later to serve the nation.

• (1530)

As for you, Ms. Stoddart, my colleagues and myself will be at your disposal. I implore you to restore pride, as Mr. Marleau has successfully done with the staff, to put an end to this reign of terror. I have been in Parliament for 40 years, Madame, and I can get whatever I need from the staff. I had complaints, but no one to listen to me, because I had opposed his appointment. I am confident that your term will be a great success. If I can be of assistance to you in any way, I will be at your disposal.

I wish you the best of luck.

[English]

Senator Baker: I want to congratulate you on your remarkable career so far. Quite remarkable, I would say, from reading your qualifications.

My one question relates to Senator Beaudoin's original remark at the beginning and then the follow-up remark that you made concerning privacy as it relates to the Charter and to the common law, and the trend that appears to be happening with changes to the Criminal Code over the years.

Senator De Bané was remarking about being able to have your telephone number and find out your address and everything else. Well, a telephone number and an address, and certain other information. Of course, you do not need to have a search warrant to get that information from the telephone company. That has

always been the case. However, over the years, the code has changed to allow, for example, for number recorder warrants to be issued. As you know, normally when the police obtain a search warrant, it is in order to obtain information to ground a criminal charge. That is what they are seeking, and they have reasonable grounds to believe that that information is there. We have seen recent changes to the code in the last two years that indicate to us that one seeks information that will lead to further information, and thus to reasonable grounds.

I think Senator Beaudoin asked you what you think your role is in light of the two changes that are coming to the Criminal Code. One is in response to Enron. That opens up the entire area of search warrants to allow a general warrant, not time-specific, to allow financial institutions to investigate your financial affairs and, of course, report to the person from whom the warrant was issued; in other words, the investigating officer.

Is there an automatic system in place whereby the Department of Justice, when they make major changes to the Criminal Code like that, automatically go to your office to seek an opinion? Would you recommend that? If it is not there, and if you do not recommend it, then how do you see your role in terms of trying to preserve what Senator Beaudoin pointed out, quite correctly, as section 7, being fundamental justice, and sections 8 and 9 on unreasonable search and seizure, under the Charter?

Ms. Stoddart: Thank you for your questions, honourable senator. They are critical questions.

I cannot testify about the relationship now between the Department of Justice and the Privacy Commission; I will ask Mr. Marleau to continue on about that. However, it seems to me that an important role of the Privacy Commissioner is to be able to act in time, to form a well-documented, well-researched opinion on privacy implications of important legislation. This is certainly a role that I am used to.

You gave some example of issues of police power concerning people's financial status, and so on. As the president of the Quebec commission, I took a very strong stand on the sharing of information between the Sûreté du Québec and Revenue Québec and said that this difference between civil powers and criminal law powers is fundamental in our democracy. This separation should not be breached easily. Because of our representations to the Quebec National Assembly, we now have something in the Quebec Revenue Act that says that civil servants cannot give interesting information to the police, and states that this must pass before the equivalent of a judge or a justice of the peace. Not that we do not think the people in Revenue Québec may not see all kinds of relevant things going before them, but that we cannot have a society that is one continuum between police powers and simply going about your daily business. This is what you do when you fill out your income tax.

I am not familiar with those particular changes in the Criminal Code, but we must remember that often the problem is not that we do not have enough powers in society; the problem is that we do not use our powers. The question is: What powers do we have that we should have used properly, rather than seeking to give ourselves new powers? I think Mr. Marleau can inform you further about the present relationship.

Mr. Marleau: Honourable senators, there was a policy established in 2000 by Treasury Board whereby all major new programs, particularly those which deal with the traffic of personal information, are submitted for review in their sort of genesis form to the Privacy Commissioner's office for privacy impact assessment. My predecessor did not attach the same value to that policy as I did going in, and I will try and indoctrinate, if I can, my successor in the briefings.

This PIA formula is a positive new development. It is one for which I commended the government in my annual report. I recommended to the Government Operations and Estimates Committee in the House of Commons that it be made part of the law; that is, that the Privacy Act be amended and that it be made a requirement for the government to first consult the office on these initiatives so that we can, early in the process, identify the privacy concerns and allow the government to address them. We may not agree all of the time, but having that dialogue in the developmental stage of legislation is far more useful and far less antagonistic than some of the issues that Senator Andreychuk underlined. Sometimes it is so late that the Privacy Commissioner must take a strong public position in order to be understood. If the Senate wants to champion that part, I would look favourably on any initiative by this honourable chamber to turn that policy, which is the whim of the government of the day, into legislative requirement.

[Translation]

The Chairman: Ms. Stoddart, Mr. Marleau, on behalf of all honourable senators, I wish to thank you for appearing before us. We may have the pleasure of seeing you again.

[English]

Senator Carstairs: I move, seconded by the Honourable Senator Robichaud, that the motion be adopted.

The Chairman: Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

The Chairman: The motion is carried.

Is it agreed that I rise and report?

[Ms. Stoddart]

Hon. Senators: Agreed.

[Translation]

The Hon. the Speaker: Honourable senators, the sitting of the Senate has resumed.

REPORT OF COMMITTEE OF THE WHOLE ADOPTED

Hon. Lucie Pépin: Honourable senators, the Committee of the Whole has adopted the motion referred to it with respect to the appointment of Ms. Jennifer Stoddart as Privacy Commissioner for a seven-year term, and has asked me to report that the committee has completed its proceedings.

• (1540)

[English]

The Hon. the Speaker: Is it agreed, honourable senators, that the report of the Committee of the Whole be adopted?

Hon. Senators: Agreed.

Motion agreed to and report adopted.

PARLIAMENT OF CANADA ACT

BILL TO AMEND—THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Carstairs, P.C., seconded by the Honourable Senator Robichaud, P.C., for the third reading of Bill C-34, to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence, as amended.

The Hon. the Speaker: Is the house ready for the question?

Hon. Senators: Question!

The Hon. the Speaker: Honourable senators, it was moved by the Honourable Senator Carstairs, seconded by the Honourable Senator Robichaud, that this bill be read the third time now, as amended. Is it your pleasure, honourable senators, to adopt the motion?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

An Hon. Senator: On division.

Motion agreed to and bill, as amended, read third time and passed, on division.

[Translation]

ADJOURNMENT

Leave having been given to revert to Government Notices of Motions:

Hon. Fernand Robichaud (Deputy Leader of the Government): Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That the Senate do now adjourn until Tuesday, November 18, 2003, at 2 p.m.

The Hon. the Speaker: Honourable senators, is leave granted?

Hon. Senators: Agreed.

Motion agreed to.

[English]

ASSISTED HUMAN REPRODUCTION BILL

SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Morin, seconded by the Honourable Senator Gauthier, for the second reading of Bill C-13, respecting assisted human reproduction.

Hon. Noël A. Kinsella (Deputy Leader of the Opposition): Honourable senators, I rise to participate in the debate at second reading on Bill C-13, the Assisted Human Reproduction Bill.

Honourable senators, we have had important contributions in this debate so far at second reading from several senators, including the proponent of the bill, our colleague Senator Morin, and the opposition critic, Senator Keon. We are particularly well situated to have such fine scientists and physicians in the person of the two senators who have spoken to the bill, as well as the other senators who have spoken.

Given that second reading debate is on the principle of a bill, it is important that we attempt to identify and comment on the principle or principles that underlie this legislative initiative of the government. There is a section of the bill, indeed, entitled "principles," but sometimes it is necessary to get behind those principles that are articulated in a piece of legislation.

If the principle is that contemporary society ought to use all available biotechnical techniques and all available knowledge in the field of biotechnology to support Canadian families in their desire to found and raise children, then I believe that this is a noble and laudable principle.

However, if the principle of the bill, upon analysis, is to promote research on cross-species genetic engineering, then, almost in an *a priori* fashion, I would, reject such a principle as offensive to the dignity and worth of the human person.

Honourable senators, if, however, the principle of the bill is to set in place for Canada a legislative framework and a legislative protocol, together with the appropriate infrastructure that would facilitate ongoing research for the betterment of our families in Canada, then we might well see this initiative as being supportive of the dignity and inestimable value of the human person.

In an effort to discern the principles contained in this bill, I find myself challenged by the very broad range of what many would describe as cutting-edge, biotechnologically-based issues contained in this bill, one way or the other. When faced with this challenge in the examination of proposed legislation, I have to ask myself the question: Why has the government decided to put so many different issues into the same bill?

One might, from that, inquire of the government whether a different approach might have been better — namely, to put certain issues in the bill that have a common basis, and in a separate bill, other issues. I put that forward as a question.

This, in turn, raises, at least for me, the matter of an issue of legislative process, as well as the substance of the bill that is before us. In terms of legislative process, it will be important for all honourable senators to know whether the government will use its significant majority in the Senate to permit this chamber to conduct a thorough examination of Bill C-13 at each stage, or whether the government will use its heavy majority and be driven by a fixed schedule to bring closure to our work.

I am hopeful that we will have sufficient time to do the necessary study in detail, for without significant time we would be unable to canvass, quite frankly, the many principles that are associated with this bill; principles which, on the one hand, relate to impressive advancements in biotechnology and, on the other hand, principles that speak to our ethical analysis concerning the dignity and worth of the human person.

• (1550)

In terms of substance, the part of the bill that bans human cloning rests on a position shared by so many Canadians. That same clause, clause 5 of the bill, it prohibits, quite appropriately in my judgment, the mixing of human genetic material with material from other species for the creation of some form of human hybrid.

As I have indicated, I find this to be a solid legislative measure, and one which rests on a principle that I would consider to be bedrock.

We must be guided in our work by prudence. We will be taxing whatever wisdom we can muster to guide us in the examination of all of the proposed provisions in the bill, dealing with a variety of different issues. We will be required to probe issues that will warrant many different approaches in terms of ethical analysis.

It will be important to explore those philosophical and theological approaches with openness, seeking to learn what we can through the insights of the various faith traditions in our country. At the same time, we must be generous in our approach to the marvels that the world of science places before us in the 21st century.

I do not wish to pre-judge anything at this stage, but I have canvassed and sought counsel from a number of bioethicists across Canada, as well as a number of scientists in the university environment and in reproductive clinics and physicians. I am impressed by the desire, which I think is the common desire of all, to have a legislative framework that will allow Canadian families to receive the kind of modern assistance that they can receive — and that should be available to the Canadian family. At the same time, we must find the protocol that is appropriate so that science can continue to probe the new areas of knowledge that are for the common good. I believe that all of this can be done and, at the same time, be respectful of the value economies of the great faith traditions in our land.

In many ways, the consensus that I was gathering from those with whom I consulted was that, on balance, this is probably a pretty good direction for a legislative framework. Notwithstanding that, in the particular, serious concerns have been expressed by many.

In trying to understand that, I am reminded of the significant impact that the world community was successful in making when it came together on December 10, 1948, over more than half a century ago, and agreed on a universal standard of human rights, based upon the dignity and worth of the human person. I speak, of course, of the Universal Declaration of Human Rights.

However, honourable senators, it is instructive for us to recall that, although the world community was able to come together and agree on a legislative framework at the international level articulating human rights, when UNESCO brought together the great thinkers of the world, from all the different schools of thought, all the different legal systems, while they accepted the rights that were articulated in the legislative framework, they were not able to agree upon the same reason why the various rights were rights.

We might very well find ourselves, as legislators, in coming up with a piece of public legislation that will meet the objectives of the common good and the public interest, that there may be a variety of different approaches to justification. We may find agreement on the statute, but there may be a variety of different reasons that people hold as to why it is good legislation.

The Hon. the Speaker: Is the house ready for the question?

Some Hon. Senators: Question!

The Hon. the Speaker: It was moved by the Honourable Senator Morin, seconded by the Honourable Senator Gauthier, that this bill be read the second time now. Is it your pleasure, honourable senators, to adopt the motion?

Hon. Senators: Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

The Hon. the Speaker: Honourable senators, when shall this bill be read the third time?

On motion of Senator Carstairs, bill referred to the Standing Senate Committee on Social Affairs, Science and Technology.

THE SENATE

TRIBUTE ON RETIREMENT OF MACE BEARER

Hon. Sharon Carstairs (Leader of the Government): Honourable senators, as we are getting very close to four o'clock, when we must adjourn, on behalf of all members of this chamber, I want to pay tribute to a very special participant in this chamber, although he is not one of the senators. That, of course, is our Mace Bearer, Richard, Dick, Logan, who has announced that, as of January, he will no longer be our Mace Bearer in this place. I want to thank him for his excellent work, and for the demeanour in which he conducts himself.

Palliative care is near and dear to my heart, and I was particularly touched when he told me that he wanted to have more time to devote to the St. Lazarus Society, which has focused on palliative care. He goes with our love, affection, best wishes and encouragement to continue to do good work for all the people of Canada — and absolutely, to find some time to spend with his grandchildren.

Hon. Senators: Hear, hear!

The Hon. the Speaker: Honourable senators, I know it is not in order, but I would like to be permitted to associate myself with the remarks of Senator Carstairs.

Thank you, Richard. You have been a wonderful Mace Bearer and supporter.

Honourable senators, it being 4 o'clock, pursuant to rule 6(2) of our rules, I declare that the motion to adjourn has been moved and adopted.

The Senate adjourned until Tuesday, November 18, 2003, at 2 p.m.

THE SENATE OF CANADA
PROGRESS OF LEGISLATION
(2nd Session, 37th Parliament)

Friday, November 7, 2003

GOVERNMENT BILLS
(SENATE)

No.	Title	1 st	2 nd	Committee	Report	Amend	3 rd	R.A.	Chap.
S-2	An Act to implement an agreement, conventions and protocols concluded between Canada and Kuwait, Mongolia, the United Arab Emirates, Moldova, Norway, Belgium and Italy for the avoidance of double taxation and the prevention of fiscal evasion and to amend the enacted text of three tax treaties.	02/10/02	02/10/23	Banking, Trade and Commerce	02/10/24	0	02/10/30	02/12/12	24/02
S-13	An Act to amend the Statistics Act	03/02/05	03/02/11	Social Affairs, Science and Technology	03/04/29	0	03/05/27		

GOVERNMENT BILLS
(HOUSE OF COMMONS)

No.	Title	1 st	2 nd	Committee	Report	Amend	3 rd	R.A.	Chap.
C-2	An Act to establish a process for assessing the environmental and socio-economic effects of certain activities in Yukon	03/03/19	03/04/03	Energy, the Environment and Natural Resources	03/05/01	0	03/05/06	03/05/13	7/03
C-3	An Act to amend the Canada Pension Plan and the Canada Pension Plan Investment Board Act	03/02/26	03/03/25	Banking, Trade and Commerce	03/03/27	0	03/04/01	03/04/03	5/03
C-4	An Act to amend the Nuclear Safety and Control Act	02/12/10	02/12/12	Energy, the Environment and Natural Resources	03/02/06	0	03/02/12	03/02/13	1/03
C-5	An Act respecting the protection of wildlife species at risk in Canada	02/10/10	02/10/22	Energy, the Environment and Natural Resources	02/12/04	0	02/12/12	02/12/12	29/02
C-6	An Act to establish the Canadian Centre for the Independent Resolution of First Nations Specific Claims to provide for the filing, negotiation and resolution of specific claims and to make related amendments to other Acts	03/03/19	03/04/02	Aboriginal Peoples	03/06/12 03/10/07	5 -	referred back to Committee 03/09/25 03/10/21 Message from Commons- agree with amendments 03/11/04	03/11/07	23/03
C-8	An Act to protect human health and safety and the environment by regulating products used for the control of pests	02/10/10	02/10/23	Social Affairs, Science and Technology	02/12/10	0	02/12/12	02/12/12	28/02
C-9	An Act to amend the Canadian Environmental Assessment Act	03/05/06	03/05/13	Energy, the Environment and Natural Resources	03/06/04	0	03/06/05	03/06/11	9/03

No.	Title	1 st	2 nd	Committee	Report	Amend	3 rd	R.A.	Chap.
C-10	An Act to amend the Criminal Code (cruelty to animals and firearms) and the Firearms Act	02/10/10	02/11/20	Legal and Constitutional Affairs	02/11/28	Divided			
						Message from Commons concurring with division 03/05/07			
C-10A	An Act to amend the Criminal Code (firearms) and the Firearms Act	-	-	Legal and Constitutional Affairs	02/11/28	0	02/12/03	03/05/13	8/03
C-10B	An Act to amend the Criminal Code (cruelty to animals)	-	-	Legal and Constitutional Affairs	03/05/15	5	03/05/29		
						Message from Commons-agree with two amendments, disagree with two, and amend one 03/06/09 Referred to committee 03/06/11 Reported 03/06/12 Report adopted (insist on one, replace one, amend one) 03/06/19 Message from Commons-disagree with Senate's amendments 03/09/30 Referred to committee 03/11/06			
C-11	An Act to amend the Copyright Act	02/10/10	02/10/30	Social Affairs, Science and Technology	02/12/05	0	02/12/09	02/12/12	26/02
C-12	An Act to promote physical activity and sport	02/10/10	02/10/23	Social Affairs, Science and Technology	02/11/21	0 + 1 at 3 rd 02/12/04 2 at 3 rd 03/02/04	03/02/04	03/03/19	2/03
C-13	An Act respecting assisted human reproduction	03/10/28	03/11/07	Social Affairs, Science and Technology					

No.	Title	1 st	2 nd	Committee	Report	Amend	3 rd	R.A.	Chap.
C-14	An Act providing for controls on the export, import or transit across Canada of rough diamonds and for a certification scheme for their export in order to meet Canada's obligations under the Kimberley Process	02/11/19	02/11/26	Energy, the Environment and Natural Resources	02/12/04	0	02/12/05	02/12/12	25/02
C-15	An Act to amend the Lobbyists Registration Act	03/03/19	03/04/03	Rules, Procedures and the Rights of Parliament	03/05/14	1	03/05/28 Message from Commons-agree with amendment 03/06/09	03/06/11	10/03
C-17	An Act to amend certain Acts of Canada, and to enact measures for implementing the Biological and Toxin Weapons Convention, in order to enhance public safety	03/10/08							
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2003	02/12/05	02/12/10	-	-	-	02/12/11	02/12/12	27/02
C-23	An Act respecting the registration of information relating to sex offenders, to amend the Criminal Code and to make consequential amendments to other Acts	03/11/05							
C-24	An Act to amend the Canada Elections Act and the Income Tax Act (political financing)	03/06/11	03/06/16	Legal and Constitutional Affairs	03/06/19	0	03/06/19	03/06/19	19/03
C-25	An Act to modernize employment and labour relations in the public service and to amend the Financial Administration Act and the Canadian Centre for Management Development Act and to make consequential amendments to other Acts	03/06/03	03/06/13	National Finance	03/09/18	0	03/11/04	03/11/07	22/03
C-28	An Act to implement certain provisions of the budget tabled in Parliament on February 18, 2003	03/05/27	03/06/04	National Finance	03/06/12	0	03/06/19	03/06/19	15/03
C-29	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2003	03/03/25	03/03/26	-	-	-	03/03/27	03/03/27	3/03
C-30	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004	03/03/25	03/03/26	-	-	-	03/03/27	03/03/27	4/03
C-31	An Act to amend the Pension Act and the Royal Canadian Mounted Police Superannuation Act	03/06/03	03/06/11	National Security and Defence	03/06/16	0	03/06/17	03/06/19	12/03
C-32	An Act to amend the Criminal Code and other Acts	03/10/30							

No.	Title	1 st	2 nd	Committee	Report	Amend	3 rd	R.A.	Chap.
C-34	An Act to amend the Parliament of Canada Act (Ethics Commissioner and Senate Ethics Officer) and other Acts in consequence	03/10/02	03/10/27	Rules, Procedures and the Rights of Parliament	03/11/03	0 + 1 at 3 rd	03/11/07		
C-35	An Act to amend the National Defence Act (remuneration of military judges)	03/06/13	03/09/18	Legal and Constitutional Affairs					
C-36	An Act to establish the Library and Archives of Canada, to amend the Copyright Act and to amend certain Acts in consequence	03/10/28	03/11/04	Social Affairs, Science and Technology					
C-37	An Act to amend the Canadian Forces Superannuation Act and to make consequential amendments to other Acts	03/10/20	03/10/27	Social Affairs, Science and Technology	03/11/05	0	03/11/06	03/11/07	26/03
C-39	An Act to amend the Members of Parliament Retiring Allowances Act and the Parliament of Canada Act	03/06/03	03/06/11	Legal and Constitutional Affairs	03/06/19	0	03/06/19	03/06/19	16/03
C-41	An Act to amend certain Acts	03/10/07	03/10/29	Legal and Constitutional Affairs					
C-42	An Act respecting the protection of the Antarctic Environment	03/06/13	03/09/17	Energy, the Environment and Natural Resources	03/09/18	0	03/10/07	03/10/20	20/03
C-44	An Act to compensate military members injured during service	03/06/13	03/06/13	National Security and Defence	03/06/16	0	03/06/18	03/06/19	14/03
C-45	An Act to amend the Criminal Code (criminal liability of organizations)	03/10/27	03/10/29	Legal and Constitutional Affairs	03/10/30	0	03/10/30	03/11/07	21/03
C-46	An Act to amend the Criminal Code (capital markets fraud and evidence-gathering)	03/11/05							
C-47	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004	03/06/13	03/06/17	-	-	-	03/06/18	03/06/19	13/03
C-48	An Act to amend the Income Tax Act (natural resources)	03/10/22	03/10/27	Banking, Trade and Commerce	03/11/06	0	03/11/07	03/11/07	28/03
C-49	An Act respecting the effective date of the representation order of 2003	03/10/23							
C-50	An Act to amend the statute law in respect of benefits for veterans and the children of deceased veterans	03/10/27	03/10/29	Social Affairs, Science and Technology	03/11/05	0	03/11/06	03/11/07	27/03
C-53	An Act to change the names of certain electoral districts	03/10/23	03/10/29	Legal and Constitutional Affairs					
C-55	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2004	03/10/28	03/11/04	-	-	-	03/11/05	03/11/07	25/03

COMMONS PUBLIC BILLS

No.	Title	1 st	2 nd	Committee	Report	Amend	3 rd	R.A.	Chap.
C-205	An Act to amend the Statutory Instruments Act (disallowance procedure for regulations)	03/06/16	03/06/19	-	-	-	03/06/19	03/06/19	18/03
C-212	An Act respecting user fees	03/09/30	03/10/22	National Finance					
C-227	An Act respecting a national day of remembrance of the Battle of Vimy Ridge	03/02/25	03/03/26	National Security and Defence	03/04/02	0	03/04/03	03/04/03	6/03
C-249	An Act to amend the Competition Act	03/05/13	03/09/17	Banking, Trade and Commerce					
C-250	An Act to amend the Criminal Code (hate propaganda)	03/09/18							
C-260	An Act to amend the Hazardous Products Act (fire-safe cigarettes)	03/11/03							
C-300	An Act to change the names of certain electoral districts	02/11/19	03/06/03	Legal and Constitutional Affairs					
C-411	An Act to establish Merchant Navy Veterans Day	03/06/12	03/06/17	National Security and Defence	03/06/18	0	03/06/19	03/06/19	17/03
C-459	An Act to establish Holocaust Memorial Day	03/10/21	03/11/03	Committee of the Whole	03/11/03	1	03/11/04 Message from Commons-agree with amendment 03/11/05	03/11/07	24/03

SENATE PUBLIC BILLS

No.	Title	1 st	2 nd	Committee	Report	Amend	3 rd	R.A.	Chap.
S-3	An Act to amend the National Anthem Act to include all Canadians (Sen. Poy)	02/10/02	03/06/10	Social Affairs, Science and Technology	03/10/23	0			
S-4	An Act to provide for increased transparency and objectivity in the selection of suitable individuals to be named to certain high public positions (Sen. Stratton)	02/10/02							
S-5	An Act respecting a National Acadian Day (Sen. Comeau)	02/10/02	02/10/08	Legal and Constitutional Affairs	03/06/03	2	03/06/05	03/06/19	11/03
S-6	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	02/10/03							
S-7	An Act to protect heritage lighthouses (Sen. Forrestal)	02/10/08	03/02/25	Social Affairs, Science and Technology	03/06/19	0	03/09/24		
S-8	An Act to amend the Broadcasting Act (Sen. Kinsella)	02/10/09	02/10/24	Transport and Communications	03/03/20	0	03/04/02		

No.	Title	1 st	2 nd	Committee	Report	Amend	3 rd	R.A.	Chap.
S-9	An Act to honour Louis Riel and the Metis People (Sen. Chalifoux)	02/10/23	03/05/06	Legal and Constitutional Affairs					
S-10	An Act concerning personal watercraft in navigable waters (Sen. Spivak)	02/10/31	03/02/25	Energy, the Environment and Natural Resources	03/09/18	0	03/11/04		
S-11	An Act to amend the Official Languages Act (promotion of English and French) (Sen. Gauthier)	02/12/10	03/05/07	Official Languages	03/11/04	0			
S-12	An Act to repeal legislation that has not been brought into force within ten years of receiving royal assent (Sen. Banks)	02/12/11	03/02/27	Legal and Constitutional Affairs					
S-14	An Act to amend the National Anthem Act to reflect the linguistic duality of Canada (Sen. Kinsella)	03/02/11	03/06/17	Official Languages	03/11/05	0			
S-15	An Act to remove certain doubts regarding the meaning of marriage (Sen. Cools)	03/02/13	Dropped from Order Paper pursuant to Rule 27(3) 03/06/05						
S-16	An Act to amend the Constitution Act, 1867 and the Parliament of Canada Act (Speakership of the Senate) (Sen. Oliver)	03/03/18							
S-17	An Act respecting the Canadian International Development Agency, to provide in particular for its continuation, governance, administration and accountability (Sen. Bolduc)	03/03/25	03/06/19	National Finance					
S-18	An Act to amend the Criminal Code (lottery schemes) (Sen. Lapointe)	03/04/02	03/10/21	Legal and Constitutional Affairs					
S-20	An Act to amend the Copyright Act (Sen. Day)	03/05/15	03/10/07	Banking, Trade and Commerce (withdrawn) 03/10/08					
S-22	An Act respecting America Day (Sen. Grafstein)	03/09/16		Social Affairs, Science and Technology					
S-23	An Act to prevent unsolicited messages on the Internet (Sen. Oliver)	03/09/17							
S-24	An Act to amend the Royal Canadian Mounted Police Act (modernization of employment and labour relations) (Sen. Nolin)	03/10/23							

PRIVATE BILLS

No.	Title	1st	2nd	Committee	Report	Amend	3rd	R.A.	Chap.
S-19	An Act respecting Scouts Canada (Sen. Di Nino)	03/05/14	03/06/09	Legal and Constitutional Affairs					
S-21	An Act to amalgamate the Canadian Association of Insurance and Financial Advisors and The Canadian Association of Financial Planners under the name The Financial Advisors Association of Canada (Sen. Kirby)	03/06/03	03/06/09	Banking, Trade and Commerce	03/10/30	1	03/11/04	03/11/07	

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